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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5581-2016 (O&M)

Date of decision : 14.01.2019

Ashwani Kumar

... Petitioner

Versus

Yog Maya Sood and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Manhas, Advocate
for the petitioner.

Mr. Y.P. Singla, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 31.05.2016, whereby the appeal preferred by the defendant No.1 against the order dated 25.01.2014 dismissing the application filed under Order 9 Rule 13 for setting aside the ex parte judgment and decree dated 07.08.2007, has been allowed.

Learned counsel appearing on behalf of the petitioner submitted that in pursuance to the agreement to sell dated 16.07.1995, respondent-defendant No.1 had agreed to sell the suit property as he was only holder of the allotment letter by paying 25%. The plaintiff had paid balance consideration plus 50% and when he did not come forward, he was constrained to file the suit. In the suit, the defendant appeared through counsel, but unfortunately, it was dismissed in default on 18.08.2003. An

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application for restoration of the suit was submitted on 05.09.2003 and notice was issued and the defendant intentionally did not receive the service, which is evident from Ex.P13, report of the postman. Even registered A.D. Cover (Ex.P-14) was also sent, but they refused. Faced with this situation, an application for publication was submitted which was allowed and the publication was caused and despite that the defendant did not appear and proceeded *ex parte*, resulting into, *ex parte* judgment and decree. The application is dated 27.02.2009, after delay of one and half year. No explanation has come forth in not pursuing the suit diligently. The reasonable cause has also not been explained and rightly so, the trial Court on the basis of the evidence brought on record, dismissed the application. The sole ground on which the lower Appellate Court has favoured with the defendant was the publication caused in Bhiwani, whereas the address of the defendant was of Himachal Pradesh, resulting into, the impugned order. The suit was restored on 23.02.2006. However this Court after examination of the record, while issuing notice of motion, passed the interim order on 08.11.2016. All these facts lead to irresistible conclusion that the defendant had been negligent in not pursuing the suit and no explanation has come forth as to how the application was within the period of limitation i.e. 30 days from the acquisition of the knowledge, thus, urges this Court for setting aside the impugned order.

Learned counsel appearing on behalf of the respondent-defendant No.1 submitted that the plaintiff had also not been diligent in pursuing the suit as after the impugned order, the suit was restored and continued till the date of the passing of the interim order. In view of the order dated 01.11.2018, whereby stay granted earlier had been vacated in

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view of the law down by Hon'ble the Supreme Court, noticed in the order, the suit has again been dismissed in default on 08.01.2019. This is a reflection of tardy and lackadaisical approach, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Manhas.

The facts as noticed above are not in dispute. It is not decipherable that how the publication was effected in Danik Chetna, Bhiwani, when address of the defendant No.1 was of Himachal Pradesh. It itself was a clincher for the Court below not to accept the publication and proceed the defendant as *ex parte*. The trial Court also failed to notice the aforementioned facts. An attempt to challenge the aforementioned order is basically to avoid the contest by the defendant as the plaintiff has something to conceal. I would refrain myself to comment further as it would be subject matter of the adjudication in the pending suit, which has again been dismissed in default, in case the petitioner-plaintiff chooses to move an application for restoration. Be that as it may, the impugned order, under challenge, thus, cannot be said to be suffering from illegality and perversity, much less, cannot be said to be without jurisdiction. The present revision petition is dismissed.

14.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**