

CR-5799-2014 (O&M)

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

CR-5799-2014 (O&M)

Date of decision : 09.01.2019

Amanbir Singh and another

... Petitioners

Versus

Rajinder Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.K. Kataria, Advocate
for the petitioners.

Mr. G.S. Bedi, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 03.05.2013 and 29.05.2014, whereby the trial Court dismissed the application submitted by the petitioners-defendants-vendors under Order 9 Rule 13 of CPC for setting aside the *ex parte* judgment and decree dated 02.11.2007 and affirmed by the lower Appellate Court.

The respondents-plaintiffs instituted the suit on 06.10.2005 seeking specific performance of agreement to sell dated 15.06.2004, which was preceded by a legal notice dated 04.08.2005, by giving the address of the petitioners, as indicated in the agreement to sell. On 11.10.2005, despite receipt of the summons, no body turned up and the defendants were proceeded *ex parte*. An application for setting aside the *ex parte* judgment and decree under Order 9 Rule 13 of CPC was submitted, on 29.08.2009, as

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cause of action arose on receipt of the summons in the execution application. Despite examination of the witnesses, the application has been dismissed.

Learned counsel for the petitioners-defendants submitted that the order dated 11.10.2005 is not in consonance with the provisions of Order 5 Rule 17 of CPC as the summons were not witnessed by any of the witness. A valuable right has been taken away as the petitioners-defendants did not execute the agreement to sell. He on instruction from his clients, undertakes to comply with any direction, which this Court may deem fit, in case one opportunity is granted.

Learned counsel for the respondents-plaintiffs submitted that the legal notice dated 04.08.2005 was sent through registered post, which carried a presumption. The petitioners-defendants had the knowledge of pendency of the suit, intentionally avoided the appearance and allowed the *ex parte* decree to delay the execution of the judgment and decree. It is adoption of delaying tactics, which have been noticed by both the Courts below. There was a compliance of the provisions of Order 5 of CPC as the affixation at the address given in the agreement was made, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book.

From the facts emanated above, it is evident that the petitioners-defendants had been lackadaisical and tardy in not contesting the suit. It cannot be believed that the petitioners-defendants did not have the knowledge of pendency of the suit as before filing of the suit in October 2005, a legal notice of August 2005 under registered cover was served. The

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respondents-plaintiffs in pursuance to the judgment and decree had deposited the balance sale consideration of ₹17 Lakhs. Such type of litigant do not deserve any concession, but in order to advance justice and prevent miscarriage of justice, I deem it appropriate to set aside the *ex parte* judgment and decree including the impugned orders, subject to the payment of costs of ₹1,25,000/- to be paid to the respondents-plaintiffs, which shall be a condition precedent. The petitioners-defendants shall file the written statement within a period of fifteen days from the date of appearance in the Court below and on receipt of the replication, the trial Court shall frame the issue and afford 3-3 effective opportunities to the parties to the *lis* and shall endeavour to decide the suit within a period of ten months.

The parties or through their counsel are directed to appear before the Court below on 15.02.2019.

It is made clear that in case of non-payment of costs, *ex parte* judgment and decree including the impugned orders shall automatically stand restored.

The present revision petition stands disposed of, in the aforesaid terms.

09.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**