

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

**C.R. No.6200 of 2012 (O&M)
Date of Decision.10.05.2019**

Surinder Kumar Bansal and another

...Petitioners

Vs

Avtar Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Pritam Saini, Advocate
for the petitioners.

Mr. Veneet Soni, Advocate
for the respondents.

-.-

AMIT RAWAL J. (ORAL)

The present revision petition is directed against the order dated 25.02.2010 passed by the Additional Civil Judge (Sr. Division), Naraingarh and the judgment dated 13.08.2012 passed by the Additional District Judge, Ambala whereby application of the petitioners-defendants filed under the provisions of Order 9 Rule 13 CPC read with Section 151 CPC for setting aside the ex parte order dated 10.04.1997 and decree dated 03.03.1998 has been dismissed.

The respondent-plaintiff No.1 filed suit for specific performance of agreement to sell dated 26.4.1995 against defendants No.1 to 3 in respect of land measuring 33 kanals for total sale consideration of ₹1,77,000/- against payment of ₹54,250/- as earnest money by challenging the sale deed dated 26.8.1996 executed by defendant No.1 in favour of defendants No.2 and 3. The target was stipulated as 15.06.1995, which was extended till 31.12.1996 on payment of ₹10,000/- on 14.12.1995 but defendants played fraud

upon him by selling 24 kanals of land vide sale deed *ibid*. The petitioners defendants contested the suit but did not appear and proceeded ex parte on 10.04.1997, resulting into ex parte decree dated 03.03.1998. The application under Order 9 Rule 13 CPC was filed on 16.10.1999 but the same has been dismissed.

Mr. Pritam Singh Saini, learned counsel appearing on behalf of the petitioners submitted that no registered cover or munadi with the plaint was filed by respondent No.1-plaintiff despite the order of the Court. Surinder Kumar Bansal, petitioner No.1, was posted as Executive Engineer and petitioner No.2 was studying in Thapar College, Patiala but in the suit their addresses at Panchkula were given, therefore, report on the summons was procured. Summons were not in the prescribed format and the report dated 17.02.1997 revealed that petitioners-defendants were avoiding service, which is not comprehensible as it has been proved through evidence regarding the posting of defendant No.2 at the relevant time. The execution application bearing No.14 dated 17.4.1998 was filed and on acquiring knowledge on 03.10.1999, immediately the application for setting aside the ex parte judgment and decree was filed by defendants No.2 and 3.

Pritam Kaur received intimation of ex parte judgment and decree when received summons in proceedings setting aside ex parte decree and filed separate application.

Surinder Kumar Bansal was examined as AW2 and submitted that he was on inspection tour of canals in Amloh area, which has been proved through the log book Ex.A4 but the Courts

below non-suited the petitioners-defendants by relying upon the cross-examination when with regard to question whether house No.326, Sector 7, Panchkula owned by him and residing there along with family, the answer was in affirmative. AW5 Chander Singh, Senior Assistant from the office of Executive Engineer, Devigarh Division, Patiala deposed that the petitioner-Surinder Kumar Bansal was posted as Executive Engineer w.e.f. 28.06.1996 to 10.06.1997 and was required to remain in official residence at Devigarh for 24 hours. AW6 Chowkidar of the house of the petitioner at Panchkula also deposed regarding posting of the petitioner at Patiala.

Avtar Singh himself examined as RW1 and produced RW2 Ashwini Kumar, Process Server and RW3 Mukhtiar Singh, Process Server. No procedure of effective service through registered cover as per Order 5 Rule 19A CPC was adopted. Munadi was also conducted at the same address in the same manner. The trial court unnecessarily decided the suit and by that time, suit would have been decided on merit had there not been strong opposition of setting aside ex parte judgment and decree.

Mr. Veneet Soni, learned counsel appearing on behalf of the respondent-decree holder submitted that revision petition bearing No.1335 of 2013 filed by the legal representatives of defendant-Pritam was dismissed on 04.03.2013, therefore, the present revision petition is not maintainable. Pritam Kaur purchased the land from the Government vide registered sale deed dated 24.4.1995 and the agreement to sell was entered on 26.4.1995. Munadi was effected by the process server and summons were attested by the witnesses.

Pritam Kaur during cross-examination admitted that the property was situated in village Kohra Bhura and agreement was entered on 26.04.1995. It was a sheer attempt to delay the execution of the decree. Through the assistance of the local commissioner appointed by the court, sale deed has already been executed and only possession is required to be taken. Petitioners-defendants had knowledge of the suit but deliberately avoided the service and rightly so, the application for setting aside the ex parte judgment and decree has been dismissed by the trial Court and affirmed by the lower Appellate Court in misc. appeal.

I have heard learned counsel for the parties and appraised the paper book. It would be apt to reproduce zimni orders from 3.2.1997 to 10.04.1997, which are as under:-

“Avtar Singh Vs. Pritam Kaur

Present: Sh. Naib Singh, counsel for the plaintiff.

Suit presented today. It be checked and registered. Notice of the suit be given to the defendants for 17.2.97 on filing of PF/RC, copies of plaint etc. Along with the suit, an application u/o 39 Rules 1 & 2 read with Section 151 CPC for ad interim injunction is also filed. Notice of the stay application be also given to the defendants for the date fixed.

Sd/- C.J. (S.D.)/3.2.97

Present: Sh. Naib Singh, counsel for the plaintiff.

Summon received back with avoiding the service. He be summoned through munadi for 10.4.97. PF & Munadi fee be deposited within four days.

Sd/- C.J. (S.D.)/17.2.97.

Present: Sh. Naib Singh counsel for the plaintiff.

Defendants No.1, 2 & 3 served for today through munadi. But he is not present. It is 2.30 P.M. Hence the defendants Smt. Pritam Kaur, Surinder Kumar Bansal, Manav Kumar are proceeded against ex parte. Now to come up for ex parte evidence on 24.2.98.

sd/- C.J.(S.D)/10.4.97.”

The aforementioned orders do not reflect that registered covers were ever filed and report of refusal was there. Report on summons for hearing on 17.02.1997 was that Mukhtiar Singh, Process Server reached at the spot and enquired about Surinder Kumar Bansal and Manav Kumar Bansal, who were present in House but went underground to avoid service and similar was report of Ramesh Kumar munadi karinda. Both the Courts below have seriously abdicated in not referring to statements of AW5 and AW6. The officer with log book consistently and candidly deposed the position of Surinder Kumar Bansal at Devigarh as his duty was to look the water into canal.

Manav Kumar Bansal was studying in Thapar College at Patiala. The house was locked. The chowkidar also deposed in the same manner. Therefore, the aforementioned service report cannot rule out possibility of managing the report regarding satisfaction to proceed ex parte. Courts should have ordered fresh process through registered cover or at the best publication as stakes in the suit for specific performance are heavy. Equally so, this Court cannot remain oblivious of the lack of diligence of the petitioner in contesting the suit. Since the application is dated 16.10.1999 i.e. after one year and

seven months from filing of the execution petition. In my view, it is fit case where defendants should not be precluded to defend the suit subject to certain terms and conditions.

In view of aforementioned circumstances, the impugned orders are set aside and the application under Order 9 Rule 13 CPC is allowed subject to payment of costs of ₹1 lakh to be paid to be counsel appearing for the respondent No.1-plaintiff. The trial Court shall give three-three effective opportunities to the parties to lead evidence and complete the trial Court a period of six months from the date of appearance of parties, as the suit aforementioned was filed in the year 1997.

Both the parties through their counsel are directed to appear before the trial Court on 04.07.2019. The written statement shall be filed within 15 days from appearance. Replication, if any, within another 15 days. Both the parties are directed to file original documents and the Court shall undertake to frame the issues on the points on which there is variance. The aforementioned direction would definitely curtail the period of trial. After undertaking the task of admission and denial, parties would be confined to lead evidence on which there was no consensus qua documentary evidence.

The revision petition is disposed of accordingly in the aforementioned terms.

(AMIT RAWAL)
JUDGE

May 10, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No