

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: February 14, 2019

1. *C.R. No. 7568 of 2016*

Royal Orchid Company

.... Petitioner(s)

Versus

Rajinder Prasad Goyal and others

... Respondents.

2. *C.R. No. 7569 of 2016*

Royal Orchid Company

.... Petitioner(s)

Versus

Rajinder Prasad Goyal and others

... Respondents.

3. *C.R. No. 7570 of 2016*

Royal Orchid Company

.... Petitioner(s)

Versus

Rajinder Prasad Goyal and others

... Respondents.

4. *C.R. No. 7571 of 2016*

Royal Orchid Company

.... Petitioner(s)

Versus

Rajinder Prasad Goyal and others

... Respondents.

5. *C.R. No. 7572 of 2016*

Royal Orchid Company

.... Petitioner(s)

Versus

Rajinder Prasad Goyal and others

... Respondents.

6. *C.R. No. 7573 of 2016*

Royal Orchid Company

.... Petitioner(s)

Versus

- Rajinder Prasad Goyal and others* ... Respondents.
7. C.R. No. 7574 of 2016
- Royal Orchid Company* Petitioner(s)
- Versus
- Rajinder Prasad Goyal and others* ... Respondents.
8. C.R. No. 7575 of 2016
- Royal Orchid Company* Petitioner(s)
- Versus
- Rajinder Prasad Goyal and others* ... Respondents.
9. C.R. No. 7576 of 2016
- Royal Orchid Company* Petitioner(s)
- Versus
- Rajinder Prasad Goyal and others* ... Respondents.
10. C.R. No. 7577 of 2016
- Royal Orchid Company* Petitioner(s)
- Versus
- Rajinder Prasad Goyal and others* ... Respondents.
11. C.R. No. 7578 of 2016
- Royal Orchid Company* Petitioner(s)
- Versus
- Rajinder Prasad Goyal and others* ... Respondents.
12. C.R. No. 7579 of 2016
- Royal Orchid Company* Petitioner(s)
- Versus
- Rajinder Prasad Goyal and others* ... Respondents.

13. C.R. No. 7086 of 2016

Royal Orchid Company

.... *Petitioner(s)*

Versus

Rajinder Prasad Goyal and others

... *Respondents.*

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Karan Gupta, Advocate,
for the petitioner(s).

Mr. Ashish Gupta, Advocate,
for respondents no. 1, 3 to 5
(in CR Nos.7568, 7570, 7571 and 7577 of 2016)
for respondents no. 1, 3 and 4.
(in CR Nos.7569, 7572, 7573, 7575, 7576, 7578 & 7579 of
2016)
for respondents No. 1 and 3 to 6.
(in CR No. 7574 of 2016)
for respondents no. 1 and 3 to 9 (in CR No. 7086 of 2016)

Mr. V.K. Sachdeva, Advocate,
for respondent No.2.

Ms. Ambika Luthra, Sr. DAG, Punjab.

Amit Rawal, J. (Oral)

By this common order, I intend to dispose of all the afore-said 13 revision petitions i.e. CR Nos. 7568 to 7579 of 2016 and CR No.7086 of 2016 as question of law and facts involved in all the revision petitions are the same. For the sake of brevity, facts are being taken from CR No. 7568 of 2016.

Present revision petition is directed against the impugned order dated 03.09.2016 (Annexure P/1) of Civil Judge (Junior Division), Rajpura, whereby application of the petitioners-plaintiffs under Order 9 Rule 4 CPC

for restoration of application dated 21.05.2012 filed under Section 151 CPC dismissed in default vide order dated 17.10.2012, has been dismissed.

Mr. Karan Gupta, learned counsel appearing on behalf of the petitioner submitted that plaintiff filed suits for declaration by challenging the various sale deeds on the grounds stated therein. It was submitted that during the pendency of the suits, a compromise dated 17.04.2012 was arrived at between the parties. That suit was dismissed as withdrawn. According to the plaintiff, defendants did not honour the compromise, necessitating to submit application for recalling of the order whereby suit was dismissed as withdrawn on the basis of compromise. The said application was taken up by the Civil Judge on 21.05.2012 and adjourned the matter by seeking report of the Ahlmad for 04.06.2012. On 04.06.2012 after the receipt of the report of the Ahlmad, case was adjourned for 25.08.2012. Notice of the application on filing of process fee was issued. On 25.08.2012, matter was adjourned for 17.10.2012 as notice could not be issued on account of non-deposit of process fee. The trial Court, vide order dated 17.10.2012, dismissed the said application by invoking the provisions of Order 9 Rule 2 CPC on account of non-deposit of process fee. In fact, the petitioners were not in the knowledge of the aforesaid factum and after acquiring knowledge, application for restoration under Order 9 Rule 4 (Annexure P/2) was submitted, but it has erroneously been dismissed by the trial Court.

Learned counsel, further, submitted that no harm and prejudice would be caused in case, impugned order is set aside. There was no intention of the petitioners to delay the proceedings being affected parties.

Petitioners even changed the counsel.

Mr. Ashish Gupta, learned counsel for the respondents-defendants submitted that application filed, under Order 9 Rule 4 dated 16.05.2013 whereby the application for recalling, was dismissed in default on 17.10.2012 as it was hopelessly belated as it was not accompanied by any application for condonation. Knowledge can always be manipulated, thus, prayed for dismissal of petition.

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

Compromise and the suit having been dismissed as withdrawn on 18.04.2012 are not in dispute. But as per contents of application dated 21.05.2012 (Annexure P-5), order dated 18.04.2012 was sought to be recalled. Zimni orders referred to in the grounds of revision petition reflect pendency and dismissal in default on 17.10.2012. Application was filed in the month of May, 2013 almost 7 (seven) months after the order. The contents of the application reveal that applicants acquired the knowledge of the order only in 2nd week of March 2013 after enquiring from the counsel who did not inform them which necessitated them to move application through different counsel. The Court below should not have adopted such a hypertechnical approach for adjudication of the application seeking restoration of the order on the grounds stated therein, thus, in order to advance justice and prevent miscarriage of justice, I deem it appropriate to allow all the afore-mentioned 13 revision petitions.

Keeping in view the aforementioned observations, the impugned order is set aside subject to payment of costs of Rs.2,000/- in each case and application for restoration of application for recalling is allowed.

Accordingly, all 13 (thirteen) aforementioned revision petitions stand allowed.

February 14, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No