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

**CR No.8223 of 2015
Date of Decision : 07.05.2019**

Sarwan Kumar (deceased) through his LR Naresh Kumar

Petitioner

Versus

Gian Chand

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. A.S. Virk, Advocate
for the petitioner.

Mr. Ayush Gupta, Advocate
for the respondent.

AVNEESH JHINGAN, J (Oral)

Aggrieved of order dated 13.11.2015 passed by Nyayadhikari, Gram Nyayalaya, Shahabad (M), Kurukshetra [hereinafter referred to as 'Civil Court'] dismissing the application filed under Order XXII Rule 4 of the Code of Civil Procedure, 1908, the present Civil Revision Petition has been filed.

Brief facts of the case are that the respondent/plaintiff [hereinafter referred to as 'respondent'] filed a suit for specific performance of agreement to sell dated 28.12.2007 and additional agreements dated 30.12.2008 and

10.06.2009 with possession of the suit land. An alternative prayer for recovery of double amount of earnest money was made. The suit was filed on 13.05.2011. The defendant i.e. father of the petitioner filed a written statement. Thereafter, matter was fixed for plaintiff's evidence. The plaintiff's evidence was closed on 12.04.2013 and the matter was adjourned for defendant's evidence. In the meantime, on 21.05.2013, the defendant Sarwan Kumar died. The defendant's evidence was closed vide order dated 02.08.2013. The suit was decreed *ex-parte* vide judgment and decree dated 17.08.2013. On receiving the notice from the Executing Court, the petitioner came to know about *ex-parte* judgment and decree against his father. He moved an application on 08.08.2014 to implead him as Legal Heir and to decide the Civil Suit on merits by setting aside the judgment and decree dated 17.08.2013. The application was dismissed stating that the applicant was having sufficient knowledge about the pendency of the aforesaid Civil Suit from the very beginning. Aggrieved of the said order, the present Civil Revision Petition has been filed.

Learned counsel for the petitioner contends that petitioner gained knowledge about the *ex parte* judgment and decree only on receiving the notice of the execution and was not aware of the pending litigation earlier to that. The Civil Court dismissed the application without recording any reasons for giving finding that applicant was having knowledge about the

pendency of the Civil Suit from very beginning.

Learned counsel for the respondent argues that the address of the plaintiff and now his legal heir is same. It is sufficient to establish that applicant was in knowledge of the pendency of Civil Suit. He further argues that there was change of counsel during the pendency of the suit as is evident from the *zimni* orders, it further establishes knowledge on part of the petitioner.

Before dealing with the arguments raised by learned counsel for the parties, the relevant portion of the impugned order is reproduced below:

“6. Further, the present application for setting aside the ex parte judgment and decree dated 17.08.2013 was filed on 08.08.2014 i.e. after about one year and this period has not been explained by the applicant/defendant. In the given set of circumstances, applicant has no right to contest the suit at this belated stage as the applicant/defendant was having sufficient knowledge about the pendency of aforesaid civil suit from the very beginning. Moreover, the present application has been filed at a very belated stage and as such the same is time barred. If in such a circumstance, the impugned ex-parte judgment and decree dated 17.08.2013 is set-aside, it will be nothing but just a grant of bonus installment to the applicant as there is no illegality in the ex-parte judgment and decree dated 17.08.2013.”

From the above, it is evident that the Civil Court

proceeded to decide the application on the basis of the fact that applicant had the knowledge about the pending Civil Suit. No reason has been mentioned, nothing on record has been relied upon to come to the said conclusion.

The contention of learned counsel for the respondent that the address of the applicant and that of the plaintiff was same does not establish that the applicant had the knowledge of the pending litigation. The argument of learned counsel for the respondent that there was change of counsel during the pendency of the suit, is also of no avail. Learned counsel for the respondent failed to point out anything on record to show that the applicant had authorised any counsel after the death of the plaintiff to appear in the said litigation. In such circumstances, it cannot be said that the applicant was having the knowledge of the Civil Suit.

For the reasons mentioned above, the impugned order is set aside. The matter is remitted back to the Civil court to decide the application afresh in accordance with law.

The Civil Revision Petition is disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

May 07, 2019

pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |