

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 8310 of 2018

Date of Decision: 22.01.2019

Bachittar Singh

.....Petitioner

Versus

Baljinder Singh

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Bansal, Advocate
for the petitioner.

AVNEESH JHINGAN, J.(oral)

Aggrieved of the order dated 20.10.2015 passed by Civil Judge (Junior Division), Dasuya (hereinafter referred to as 'trial Court') dismissing the application of petitioner for setting aside ex-parte judgment and decree and challenging the dismissal of appeal against order dated 20.10.2015 vide order dated 9.10.2018, passed by Additional District Judge, Hoshiarpur (hereinafter referred to as 'appellate Court'), the present civil revision petition has been filed.

The facts in brief are that respondent/plaintiff (for short 'respondent') filed a suit for specific performance of agreement dated 2.7.2004 for sale of land as detailed in suit for consideration of Rs.10,000/- per marlas. The earnest money of Rs.1,25,000/- was paid to the petitioner and the date to execute the sale deed was fixed as 5.1.2015, which was mutually extended till 5.1.2016. The said date was extended again till 30.12.2006 on payment of Rs. 40,000/- but it was not executed.

On 28.5.2007 a suit for specific performance was filed in which notice was issued for 14.6.2007. Notice was received back with the report that

the petitioner is not residing at the said address. The matter was adjourned to file correct address. As the respondent knew this address only, an application was moved for service through publication. Vide order dated 13.8.2007, publication was ordered and thereafter done. On 16.4.2009 ex parte judgment and decree was passed in favour of the plaintiff. The decree-holder filed an application for execution. Notice was issued in the execution application and the said notice was served on the same address given in the suit. On receiving the notice, the petitioner moved an application for setting aside the ex-parte judgment and decree. The said application was dismissed on 20.10.2015.

Aggrieved of the order, an appeal was filed and the appeal met with the same fate vide order dated 9.10.2018. Hence, the present civil revision petition has been filed.

Learned counsel for the petitioner argued that the petitioner was never served. He was residing at Jalandhar in 2007 when the notice was issued inspite of that, publication was ordered in newspaper which was in circulation in the area in which the earlier address was given.

The contention raised by learned counsel for the petitioner lacks merit. The conduct of the petitioner is more than evident in the order passed by the trial Court and the Appellate Court. The pleading in the application was intentionally kept vague as it could be, by not disclosing the date as to when the petitioner shifted from his Village Johal to Jalandhar. Not only this, during cross-examination and in the process of adducing evidence, the petitioner faulted as it was proved on record that he had not permanently left Village Johal. He even faulted to give his address of Jalandhar because on two occasions he gave two addresses of Jalandhar. The application for setting aside the ex-parte order was filed in 2010 but the affidavit giving address of

Order 5 Rule 20 CPC.

Since, the petitioner was avoiding service and the summon was sent back that he was not residing at the said address, there was no occasion to make any affixation on the given address.

It could not be disputed by the petitioner that publication was made in the newspapers which were in circulation in village Johal as also in Jalandhar. The Courts below had recorded that the petitioner was holding ration card of Village Johal, he had a voter card of Village Johal and not only this, in another civil suit filed the summons were duly served on the same address. Even the notice in the execution proceedings was received by him at Village Johal. The person who does not approach the Court with clean hand and plays hide and seek to delay the proceedings, is not entitled to any relief.

No shadow can be cast upon the finding recorded by the trial Court and the appellate Court.

No interference is called for in the impugned orders.

The civil revision petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

22.01.2019
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No