

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 114

CR-2902-2019

Date of decision : 03.05.2019

Harinder Singh

..... Petitioner

VERSUS

Balkar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Anupam Bhardwaj, Advocate, for the petitioner.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 01.03.2019, passed by the Civil Judge (Junior Division), Ajnala (for short, the Trial Court), through which the defence of the petitioner/defendant has been struck off for the reason that in spite of three opportunities granted to learned counsel for the petitioner/defendant, the original agreement to sell dated 30.01.2016 was not produced.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein a declaration to the effect that the agreement to sell dated 30.01.2016 executed by the parties regarding the land, detailed and described in the head note of the plaint, be cancelled and that the earnest money paid by the petitioner/defendant be forfeited in favour of the respondent/plaintiff.

On being put to notice, the petitioner, who was defendant in the suit, appeared before the Trial Court and filed his written statement. The Trial Court thereafter framed the issues. While the respondent/plaintiff was in the midst of leading his evidence, the Trial Court issued directions to the petitioner/defendant to produce the original agreement to sell. When despite grant of three opportunities the needful was not done, the Trial Court went on to

pass the order striking of the petitioner's defence. Such order is under challenge in the present proceedings.

Learned counsel for the petitioner submits that the original agreement to sell could not be produced by the petitioner despite three opportunities granted to him by the Trial Court for the reason that on account of bereavement in his family he had gone out of station. It is further submitted that inability to produce the original agreement to sell was *bonafide*. Learned counsel for the petitioner undertakes to produce the same on the next date fixed before the Trial Court i. e. 10.05.2019.

After considering the afore-submissions made by learned counsel for the petitioner and subject to payment of ₹5,000/- as costs, to be paid by the petitioner to the respondent, the impugned order is set aside and the petitioner is permitted to produce the original agreement to sell dated 30.01.2016 on the next date fixed before the Trial Court i.e. 10.05.2019.

It is clarified that the petitioner shall be at liberty to produce his evidence in accordance with law after the respondent/plaintiff would lead his entire evidence.

The Trial Court shall ensure that the costs ordered to be paid by the petitioner to the respondent are transferred to the respondent's bank account.

The petition is allowed in the above terms.

If the respondent is aggrieved by passing of the present order, he is at liberty to approach this Court by filing of an appropriate application.

03.05.2019
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[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No