

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 3345 of 2019 (O&M)
Date of decision: 28.08.2019

Surjit Kaur (since deceased) through her LR ...Petitioner

V/s.

Lashkar Singh and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Vivek K. Thakur, Advocate for the petitioner.

RITU BAHRI, J. (Oral).

The present revision has been filed against the orders dated 19.01.2019 (P-11) passed by learned Additional District Judge, Kapurthala, dated 03.08.2009 (Annexure P-6) passed by learned Civil Judge, (Sr. Division), Kapurthala and judgment and decree dated 03.08.2000 (Annexure P-4) passed by learned Civil Judge, Kapurthala.

The brief facts of the case are that initially suit for specific performance of agreement was filed by the plaintiff-Lashkar Singh which was decreed exparte on 03.08.2000 (Annexure P-4). After filing written statement in the civil suit, the petitioner-defendant absented from the Court and thereafter the exparte decree dated 03.08.2000 (Annexure P-4) was passed against her. An application under Order 9 Rule 13 CPC for setting aside the judgment and decree dated 03.08.2000 (Annexure P-4) was filed on 18.03.2008. The trial Court, after framing the issues on the above said application, dismissed the application vide order dated 03.08.2009 (Annexure P-6). Against the said order (Annexure P-6), the petitioner filed a revision petition in this Court which was allowed to be withdrawn vide

order dated 04.04.2011 (Annexure P-7) with liberty to file appeal before the District Judge, Kapurthala and thereafter the appeal alongwith application was filed before the Additional District Judge, Kapurthala and the appeal was dismissed vide order dated 19.01.2019 (Annexure P-11) on the ground that it has been filed after inordinate delay of 03 years 04 months and 04 days from 03.08.2009 to 05.12.2012 and there is no explanation for the delay.

Learned counsel for the petitioner has vehemently argued that the petitioner being the old lady, was suffering from various diseases and initially when the civil suit was filed she could not proceed in the trial itself and in this backdrop the exparte decree was passed on 03.08.2000 (Annexure P-4). He further argued that the property in dispute was sold by her husband and she was actually owner of the property and no power of attorney was given by the petitioner to her husband to do the sale deed and no opportunity was given to her to lead evidence and exparte decree was passed. The petitioner was staying with her sister and at her back, her husband had sold the property. The sale deed did not bear her signature.

The argument of learned counsel for the petitioner has to be examined in view of the detailed reasoning given in the impugned order dated 19.01.2019 (Annexure P-11). While dismissing the appeal, in para 17 of the order, it has been observed that the civil suit for specific performance was filed with respect to agreement to sell dated 09.09.1991 against Surjit Kaur, her husband Naranjan Singh and one Karnail Singh. The suit was decided vide judgment dated 03.08.2000 and it was an exparte decree (Annexure P-4). In the year 2008, the applicant/defendant Surjit Kaur wife of Naranjan Singh filed miscellaneous application bearing No. 13

dated 18.03.2008 under Order 9 Rule 13 CPC for setting aside the abovesaid exparte decree dated 03.08.2000 which was dismissed under Order 17 Rule 3 CPC which was now under challenge alongwith the application under Section 5 of Limitation Act. A perusal of the record shows that initially Surjit Kaur had been appearing in civil suit No. 255 dated 06.09.1997. She was proceeded against exparte on 08.12.1999 and on 03.08.2000, the suit was decreed (Annexure P-4). Thereafter on 09.12.2000, respondent Lashkar Singh filed execution application on the basis of exparte decree dated 03.08.2000 in which he filed draft sale deed. Notice of draft sale deed Ex.R38 was issued to Surjit Kaur and Naranjan Singh for 03.11.2001 and said notice was duly served upon them as it clear from the report Ex.R39 made by process server on the back of notice Ex.38. So, provedly on 03.11.2001, they had come to know about exparte decree dated 03.08.2000, having been passed against them. Even otherwise, initially they both were appearing in said suit which was decreed on 03.08.2000 (Annexure P-4) and also they had filed a joint written statement Ex.R4 therein. More so, on 03.11.2001, husband of applicant Surjit Kaur namely Naranjan Singh had engaged an Advocate Devinder Singh to appear in the abovesaid execution application. Vakalatnama dated 03.11.2001 given by them in favour of said Advocate is Ex.R40. Besides on the said date (03.11.2001), said Advocate Devinder Singh filed Ex.R41 his memo of appearance for Surjit Kaur also in the execution application and as such vide order dated 03.11.2001 (Ex.R42), the said execution application was fixed for filing objections by Surjit Kaur etc. and for service of Karnail Singh (JD No. 3) through munadi. Copy of Munadi notice issued against Karnail Singh is Ex.R43 and thereafter munadi against

Karnail Singh effected on 19.11.2011 as is clear from Ex.R44. However, on 22.12.2001 one Kulwant Singh, Advocate filed his power of attorney for Kanail Singh in execution application as is clear from zimni order Ex.R45 dated 22.12.2001 and the execution application was fixed for filing objections against draft sale deed and thereafter the execution application lingered on for the same purpose till long. Ultimately on 17.05.2002, Karnail Singh filed objections while counsel for Surjit Kaur and Naranjan Singh pleaded no instructions on their behalf of the said date. Still, vide order Ex.R49 notice Ex.R50 was issued to Surjit Kaur and Naranjan Singh for 23.07.2000 which was duly served on them as is clear from Ex.R51 report of process server made on the back of notice Ex.R50. Despite service, they did not appear in the court on 23.07.2000 and as such vide order dated 23.07.2000 vide order Ex.R52, they both were proceeded against exparte in the said execution application. Then on 23.11.2002 vide order Ex.R58, Reader of court was appointed as Local Commissioner. Sale deed of suit property in favour of DH i.e. respondent Lashkar Singh stood executed and registered as is evidence from order dated 21.12.2002 Ex.R59. Warrant of possession was also issued vide said order Ex.R59. Consequently possession of suit property in favour of DH Lashkar Singh (respondent) stood delivered and execution application stood satisfied as is evident from order dated 19.04.2003. Ex.R62 and a Rapat Ex.R63 in this regard entered by Patwari in the revenue record.

All the above facts show that appellant Surjit Kaur and her husband Naranjan Singh were duly served in the execution proceedings and Advocate Devinder Singh had filed memo of appearance for Surjit Kaur and Naranjan Singh.

The argument of learned counsel for the appellant that Surjit Kaur was suffering from ill health cannot be made a ground to interfere in the impugned order dated 19.01.2019 (Annexure P-11) whereby her appeal against the order dated 03.08.2009 (Annexure P-6) has been dismissed. Another fact which is to be highlighted is that after the order dated 03.08.2009 the appellant had approached this Court by way of C.R. No. 426 of 2011 which was allowed to be withdrawn vide order dated 04.04.2011 and was given opportunity to file appeal. From 03.08.2009 till the date of filing of appeal i.e. 05.12.2012 there was an inordinate delay of 03 years 04 months and 04 days which has rightly been made a ground to dismiss the appeal vide order dated 19.01.2019 (Annexure P-11). Even from 04.04.2011, the date of order passed in CR No. 426 of 2011 (Annexure P-7) till the date of filing appeal before the Additional District Judge, Kapurthala i.e. 22.07.2016, there is an inordinate delay of 05 years, 03 months and 18 days.

Hence, no ground to interfere in the orders dated 03.08.2000 (Annexure P-4), 03.08.2009 (Annexure P-6) and 19.01.2019 (Annexure P-11) is made out.

Dismissed.

Pending application also stands dismissed.

(RITU BAHRI)
JUDGE

28.08.2019

Divyanshi

Whether speaking/reasoned
Whether reportable

:
:

Yes/No
Yes/No