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

**Civil Revision No.6542 of 2019 (O&M)
Date of Decision: 19.11.2019**

Davinder Kumar

.....Petitioner

Vs

Dalbir Singh

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 02.09.2019 passed by the Addl. Civil Judge (Sr. Divn.) Gurugram vide which the application filed by respondent/defendant under Order 9 Rule 13 CPC was allowed.

[2]. In the suit for specific performance of contract, respondent/defendant was proceeded against ex parte and ex parte judgment and decree dated 22.09.2012 was passed. Perusal of the record would show that the son of defendant namely Uma Shankar filed a separate application under Order 9 Rule 13 read with Order 1 Rule 10 CPC for setting aside judgment and decree dated 22.09.2012. Ex parte decree was

passed against his father.

[3]. Uma Shanker was donee. Gift deed No.12305 dated 17.08.2012 in respect of suit property during pendency of the civil suit was executed by the defendant in his favour. The suit property was transferred in favour of Uma Shankar and he stepped into the shoes of his father. Ex parte judgment and decree was subsequently passed on 22.09.2012. The trial Court considered Uma Shankar to be necessary party for maintaining the application under Order 9 Rule 13 CPC.

[4]. Perusal of the record would further show that the notice of the suit was issued to the defendant Dalbir Singh through registered post which was received back unserved. Thereafter an application for substituted service of defendant was filed and the same was allowed and the defendant was allegedly served with the process of substituted service. Defendant was proceeded against ex parte vide order dated 07.12.2011. An application for setting aside the ex parte judgment and decree was filed on 01.02.2016 after acquiring knowledge on 02.01.2016.

[5]. The trial Court after noticing the aforesaid facts found that the defendant was proceeded against ex parte without exhausting the ordinary process of service. No satisfaction was recorded by the trial Court while ordering substituted service.

Apparently, after the first attempt to serve the summon to defendant by means of registered post and after having received report of no service, substituted service was pressed into service straightaway and the defendant was allegedly served. Thereafter, defendant was proceeded against ex parte. Such a course was not found in consonance with Order 5 CPC. The ordinary summons were never issued to the defendant, nor the service was effected in accordance with law. Resorting to substituted service even before exhausting the mode of ordinary process cannot sustain in the eyes of law. The indulgence granted by the trial Court cannot be faulted with.

[6]. An attempt was made by the petitioner to question the locus of Uma Shankar and maintainability of the application under Order 9 Rule 13 CPC filed by him.

[7]. Learned counsel for the petitioner by pressing into service **Bibi Zubaida Khatoon vs. Nabi Hasan Saheb and Anr., 2004(1) R.C.R. (Civil) 216** and **Ram Prakash Agarwal and another vs. Gopi Krishan Agrawal (dead through) LRs and others, 2014(6) R.C.R. (Civil) 732** contended that Uma Shankar cannot be held to be a bona fide purchaser and such transferee will not be entitled to be impleaded as party to the suit as a right and the objections filed by him are not maintainable.

[8]. The controversy involved herein is not covered by the aforesaid case laws. In the instant case, an application under Order 6 Rule 17 read with Section 151 CPC filed by the defendant was allowed vide which he sought to file additional grounds under Order 9 Rule 13 CPC. The prayer for amendment of the application under Order 9 Rule 13 CPC was allowed. The case was at initial stage, wherein no evidence was led by the applicant at the relevant stage. Question of prejudice was answered against the petitioner and the amendment in the application under Order 9 Rule 13 CPC was allowed vide order dated 14.02.2017. The said order has already attained finality.

[9]. Uma Shankar became owner of the suit property by virtue of gift deed dated 17.08.2012 and mutation No.49973 was also sanctioned in his favour. The application under Order 9 Rule 13 CPC read with Order 1 Rule 10 CPC filed by Uma Shankar has been lawfully considered by the trial Court. The illegality committed by the trial Court in proceeding against ex parte against the original defendant and the said order cannot be allowed to be perpetuated. Virtually the Court has done substantial justice with the defendant as the defendant was proceeded against ex parte wholly on illegal grounds. It is a settled principle of law that no party should be condemned unheard that too by resorting to illegal proceedings.

[10]. By setting aside the ex part judgment and decree, the Court has given fair chance to the defendant to pursue his case. In a suit for specific performance, even a subsequent vendee being assignee by transfer can be impleaded as party defendant in the suit on the strength of **Thomson Press (India) Ltd. vs. Nanak Builder & Investors Private Ltd., 2013(2) R.C.R. (Civil) 875.**

[11]. For the reasons recorded hereinabove, I do not find any error or jurisdiction with the impugned order passed by the trial Court. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

November 19, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No