

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

CR-9260-2018(O&M)

Date of decision:-19.3.2019

Lt.Col. Amarjit Singh (Retd.) and another

...Petitioners

Versus

Radhey Lal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Anuj Raura, Advocate
for the petitioners.

H.S. MADAAN, J.

This revision petition is directed against the order dated 15.9.2018 passed by Civil Judge(Jr.Divn.), SAS Nagar (Mohali) allowing an application dated 28.7.2015 filed by defendant/respondent Radhey Lal for setting aside order dated 11.12.2009 vide which the defendant was proceeded against ex-parte as well as ex-parte judgment and decree dated 13.5.2013.

Briefly stated, facts of the case as can be gathered from a perusal of the record are that plaintiffs - Sh.Amarjit Singh and his wife Mrs.Manjit Kaur had filed a suit for specific performance against defendant Radhey Lal; that notice of the suit was given to the defendant; that on getting notice, the defendant had not appeared in the Court, as such was proceeded against ex-parte; that after recording evidence, the suit was decreed ex-parte on 13.5.2013; subsequently the applicant/defendant moved an application in the trial Court for setting

aside of the order vide which he had been proceeded against ex-parte as well as ex-parte judgment and decree on the assertions that he had not received the summons in the suit and was not aware about pendency of the civil suit filed by the plaintiffs; that the plaintiffs had submitted a complaint to the police against the defendant at Police Station Zirakpur and when the defendant went to the said police station on 4.7.2015, he came to know about passing of ex-parte decree against him, then he made enquiries and came to know about passing of ex-parte decree on 13.5.2013 and pendency of execution application for 7.7.2015; that the defendant appeared in the execution application through his counsel on 7.7.2015. As per the averments in the application, the plaintiffs had filed a suit against the defendant on the address where the defendant was residing in the year 2005, however, he had shifted from that address to Zirakpur, which fact was well within the knowledge of the plaintiffs but they did not get the notice issued for service of the defendant on that address; that the plaintiffs themselves has committed breach of the contract in paying the balance amount to defendant on or before 6.2.2006; that the defendant was ready to make payment of double the earnest money/received amount in the year 2005 when the agreement to sell was executed and statement of defendant was recorded in the High Court, which is evident from the order passed by the High Court in anticipatory bail application of the defendant; that in the FIR lodged by the plaintiffs, the defendant was challaned, tried and convicted for two years; that the suit property is situated at Zirakpur but plaintiffs filed the suit at District Courts, Mohali, which did not have territorial jurisdiction, in that way non-appearance of

the applicant was not intentional but due to the said reason; that the plaintiffs have got decree from the Court by concealing the material facts. Therefore, the order vide which the applicant/defendant was proceeded against ex-parte and ex-parte judgment and decree be set aside.

On notice, the plaintiffs had appeared and filed written reply contesting the application stating that no ground was there to set aside order with regard to ex-parte proceedings against the defendant and passing of ex-parte judgment and decree. It was contended that after passing of ex-parte judgment and decree the same had been executed in part in view of registration of sale deed, as ordered under the decree through process of the Court, in view of paid sale consideration in excess. Refuting the remaining allegations, the respondents/plaintiffs prayed for dismissal of the application.

For proper adjudication of the matter, the trial Court framed following issues:

1. Whether the order dated 11.12.2009 is liable to be set aside as prayed for? OPA.
2. Whether the present application is not maintainable in its present form? OPR.
3. Relief.

The parties were afforded opportunities to lead evidence in support of their claims.

After hearing arguments, the trial Court allowed the application with the observations that applicant has duly proved that he

was not residing at the address given by the respondent in the main suit and on the other hand respondents had failed to prove on record that applicant was residing at the given address and the Court was satisfied that summons were not served upon the applicant on the address on which he was actually residing at the time of ex-parte order passed by the Court on 11.12.2009. Resultantly, the application was accepted and ex-parte judgment and decree dated 13.5.2013 passed by the Court of the then Additional Civil Judge(Sr.Divn.), SAS Nagar were set aside.

The plaintiffs are feeling aggrieved by the said order and filed the present revision petition. According to them, the defendant was duly served, however, he did not opt to put in appearance and was rightly proceeded against ex-parte and after recording evidence the ex-parte judgment decree were passed, which have been acted upon, the sale deed has been executed in favour of the plaintiffs/decreed-holders through process of law. Therefore, this order be set aside. In support of his contentions, learned counsel for the petitioners has referred to **Ajita Sharma @ Sweety @ Babi Versus Rakesh Kumar Sharma, 1998(2) RCR(Civil)565** and **Jagdev Singh Versus Pheenu Ram alias Ashwani Kumar and another, 2011(3) SimLC 209.**

I have heard learned counsel for the petitioners besides going through the record and I find that the order passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Furthermore, it is always desirable that a *lis* should be decided on merits rather than shutting the doors of being heard upon a

litigant. The rules of natural justice also provide that nobody should be condemned unheard. The matter would have been different if from the record the only inference which could be gathered was that the applicant/defendant having the full knowledge of pendency of the civil suit had avoided appearance in the Court and to offer contest but nothing of that sort seems to be there.

There is no illegality or infirmity in the order, which may have called for interference by this Court while exercising revisional jurisdiction.

Finding no merit in the civil revision petition, the same stands dismissed.

19.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No