

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

**CR No.8123 of 2019(O&M)  
Date of Decision: 17.12.2019**

**Ranjeet Singh**

**.....Petitioner**

**Versus**

**Vipan Kumar**

**.....Respondent**

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

Present:Mr. S.S. Nara, Advocate  
for the petitioner.

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**RAJ MOHAN SINGH, J.**

[1]. Petitioner has assailed the order dated 26.11.2019 passed by Additional District Judge, Yamunanagar at Jagadhri upholding the order dated 11.10.2019 passed by Civil Judge (Junior Division), Yamunangar at Jagadhri.

[2]. Application under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 05.08.2015 passed by Civil Judge (Junior Division), Yamunangar at Jagadhri was concurrently dismissed on the ground that the defendant/petitioner was served in the suit on 21.05.2013 and

thereafter, defendant appeared through his counsel and sought time to file written statement. On 25.10.2013, none appeared on behalf of the defendant and he was proceeded against *ex parte*. *Ex parte* judgment and decree was passed by the trial Court on 08.05.2015. The decree for possession by way of specific performance of agreement to sell dated 27.05.2011 was passed and the defendant was directed to execute the sale deed qua the suit property in favour of the plaintiff within two months from the date of receipt of copy of judgment and decree subject to payment of balance consideration of Rs.5,80,000/-.

[3]. In the execution filed by the plaintiff/decreed holder, defendant/petitioner appeared on 21.09.2017. No application under Order 9 Rule 13 CPC was filed from the date of knowledge on 21.09.2017 till 12.07.2018 i.e. the date on which the application under Order 9 Rule 13 CPC came to be filed.

[4]. The Courts below dismissed the application on two counts. Firstly, in the suit proceedings, defendant was duly served and even had appeared through his counsel. Learned counsel for the defendant sought time to file written statement, but ultimately did not appear on 25.10.2013 and the defendant/petitioner was proceeded against *ex parte*. No application was filed for setting the *ex parte* order dated 25.10.2013 and the suit was decreed *ex parte* vide judgment

and decree dated 05.08.2015. Secondly, in the execution filed by the plaintiff, defendant/petitioner appeared on 21.09.2017, but did not file any application from the date of knowledge within a period of limitation. Application under Order 9 Rule 13 CPC was filed only on 12.07.2018 i.e. after a period of more than 9 months. No application for condonation of delay was filed along with application under Order 9 Rule 13 CPC. Owing to the facts and circumstances of the case, both the Courts below have not granted any indulgence in favour of the defendant/petitioner.

[5]. The findings recorded by the Courts below on the aforesaid consideration cannot be held to be perverse. Even in terms of proviso to Order 9 Rule 13 CPC, the decree cannot be set aside on the ground of mere irregularity. Defendant/petitioner was served in the main suit as well as in the execution. In the main suit, no application for setting aside the *ex parte* order dated 25.10.2013 and *ex parte* judgment and decree dated 05.08.2015 was filed. In the execution, defendant/petitioner was served on 21.09.2017. No application was filed for setting aside the *ex parte* judgment and decree within a period of limitation from the date of knowledge.

[6]. Filing of application after more than 9 months that too, without any application for condonation of delay, in my considered opinion, cannot be considered. This revision petition

is found to be totally devoid of merits and is accordingly dismissed.

17.12.2019  
*Prince*

(RAJ MOHAN SINGH)  
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No