

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.181 of 2020
Date of Decision:13.1.2020

Simar Kaur

...Petitioner

Versus

Kulwinder Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Mohit Singla, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. The prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the impugned judgement and decree dated 19.12.2019 passed by the learned Additional District Judge, Hoshiarpur, whereby the appeal of the petitioner has been dismissed and order the dated 13.2.2019 passed by the learned Civil Judge (Jr.Divn.) Hoshiarpur, seeking dismissal of the application under Order 9 Rule 13 CPC read with Section 151, has been upheld.

2. I find no reason to interfere with the concurrent findings of fact recorded by both the courts below after appreciating the legal position holding that defendant-petitioner had no sufficient cause preventing her from appearing at the stage of the start of her evidence in the trial Court. She was proceeded ex parte for proper and justified reasons before the trial Court and an ex parte decree was passed on 12.11.2013. The application for

setting aside the ex parte decree was filed on 8.5.2015, after much delay. The judgment debtor was the vendor of the property while the petitioner was the plaintiff in a suit for possession by way of specific performance of an agreement of sale dated 27.10.2008 for valuable consideration of Rs. 2 lakhs for 5 Marlas of a residential house in Hoshiarpur. The decree holder filed execution application in which the sale deed has been executed by the Court through the local commissioner. The defendant-petitioner blames her counsel in the lower court who did not inform her about the proceedings and the passing of the ex parte judgment. She engaged new counsel through whom she filed the application for setting aside the ex parte decree claiming that she came to know of the decree when she received summons in execution on 20.4.2015. Failing to secure an order in her favour she carried an appeal.

3. The appellate court has re-examined the opinion of the learned trial Court and reached the same conclusion that the onus heavily lay on the defendant-petitioner to prove that she was prevented by a sufficient cause from appearing in the Court within limitation. If she claims that her previous counsel let her down due to negligence on his part in defending the suit and letting her down to be confronted with an ex parte order and decree, then the learned Additional District Judge, Hoshiarpur in the impugned order dated 19.12.2019 has not fallen in error to say that she did not file any complaint to any authority against her counsel. Nor has she taken up the matter with the Bar Council. The judge records as revealed from the papers that the judgment debtor admitted that Sh.Anoop Sharma, Advocate was also her counsel in the execution application, which is clear from his application Mark RB. Had the defendant-petitioner any grudge against her

counsel, she would not have engaged him in the execution application. This sounds plausible and worthy of belief. The property stands transferred in the name of the decree holder. The vendee has waited long to reap the fruits of litigation.

4. I find no ground or material irregularity to interfere in the legally sound orders passed by the Courts below, which are upheld. The petition is dismissed in limine as no sufficient cause is made out for putting the respondent to notice by intervention.

January 13, 2020

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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes
Yes/No