

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-11634-2018(O&M)

Date of decision: 18.02.2020

Puran Singh

.....Petitioner

Versus

Satnam Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sanjeev Kumar Arora, Advocate for the petitioner

Mr. Raj Kumar Kakkar, Advocate for respondents no.1-2

ANIL KSHETARPAL, J. (ORAL)

Defendant no.3 has filed the present revision petition against order passed by the learned Additional District Judge dismissing the application for condonation of delay in filing application for re-hearing of the first appeal as provided under Order 41 Rule 21 CPC.

A suit for possession by way of specific performance of the agreement to sell was filed against the defendants. Learned Trial Court on appreciation of evidence refused to grant the relief of specific performance of the agreement to sell while granting alternative relief of refund of earnest money alongwith interest. The appeal against the aforesaid judgment was filed by the plaintiff. At that time the concerned village in which the suit property was situated fell within District Ferozepur. Thus, the appeal was filed and assigned to the Court of Additional District Judge, Ferozepur. Summons were sent but defendant no.3 did not appear. Thereafter, on creation of separate District i.e

Fazilka, the appeal was transferred to the Court of Additional District Judge, Fazilka. It was taken up at Fazilka on 13.2.2013 and the Court issued notice to respondents no. 1 and 2 but no notice was issued to respondent no.3 before the First Appellate Court (petitioner herein). Thereafter, an application was filed before the District Judge, Ferozepur which was also having jurisdiction over the area of District Fazilka for transfer of the appeal. Learned District Judge, Ferozepur transferred the appeal back to the Court of Additional District Judge, Ferozepur vide order dated 11.12.2013. It may be mentioned here that in the transfer application respondent no.3 before the First Appellate Court (petitioner herein) did cause appearance and contested the transfer application. However, learned District Judge while ordering transfer of the civil appeal did not give any date for appearance of the parties before the Court of Additional District Judge, Ferozepur. Thereafter, Additional District Judge, Ferozepur did not issue notice to respondent No.3 on the assumption that since respondent no.3 was already proceeded ex parte, hence, no notice is required to be issued.

The appeal was ex parte decided and the decree passed by the learned Trial Court for grant of alternate relief of the refund of the earnest money was substituted by decree for specific performance of the agreement to sell.

The petitioner filed an application for re-hearing of the appeal alongwith application for condonation of delay in filing the application. It was pleaded by the petitioner that he came to know of the ex parte judgment when in a criminal case pending between the parties,

opposite party produced a copy of the judgment passed by the Additional District Judge, Ferozepur. Learned Additional District Judge, Ferozepur has dismissed the application on the ground that delay of each day has not been explained.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book. It is apparent that the petitioner who was respondent no.3 in the First Appellate Court had appeared before the Court of District Judge and contested the application filed for transfer of the appeal from Fazilka to Ferozepur. Learned District Judge omitted to direct the parties to appear before the transferred Court i.e Court of Additional District Judge, Ferozepur. Additional District Judge, Ferozepur did not issue notice to respondent no.3 (the petitioner herein) before the First Appellate Court. Thus, learned Additional District Judge, Ferozepur erred. Once the learned District Judge had decided to transfer the appeal, it was incumbent upon the District Judge to direct the parties through their counsel to appear before the transferred Court. However, he omitted to do so. When the file was taken up by the learned Additional District Judge, Ferozepur, he also erred to proceed with the case without issuing notice to the parties, particularly, when learned District Judge has failed to notify the date for appearance to the parties.

Keeping in view the aforesaid facts, the order under challenge is set aside. The delay of 22 months in filing the application for re-hearing is condoned. First Appellate Court is requested to proceed to decide application for re-hearing of the appeal. Parties through their

counsel are directed to appear before the Additional District Judge, Ferozepur on 18.3.2020. Learned First Appellate Court is also requested to make sincere endeavour for disposal of the appeal expeditiously.

Petition stands allowed.

18.02.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No