

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10954-2021

Date of decision : August 25, 2021

Amar Singh

.....Petitioner

Versus

Ramesh Mittal and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.S. Mamli, Advocate for the petitioner.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This petition has been filed for setting aside judgment and decree dated 05.03.2016 passed by the learned Nyayadhikari, Gram Nyayalaya, Shahabad (M), Kurukshetra as well as order dated 02.03.2020 passed by the learned District Judge, Kurukshetra. It is further prayed that petitioner be then permitted to lead evidence and matter be decided thereafter.

Brief facts necessary for adjudication of this matter are that suit for possession by way of specific performance was filed by the respondent – plaintiff before the Gram Nyayalaya under the Gram Nyayalayas Act, 2008. It is averred by the plaintiff that the defendant i.e. present petitioner executed an agreement to sell dated 08.06.2009 with the plaintiff in respect to land measuring four kanal as detailed in the plaint. Total consideration was stated to be Rs.5,00,000/-, with earnest money of Rs. 2,50,000/- having been paid to the defendant and date of execution and registration of the sale deed including payment of balance sale consideration was fixed as 07.06.2010. As it was a holiday on the said date, the next working day was treated to be the agreed date. It is averred that the plaintiff – respondent alongwith the balance sale consideration and amount for execution and

registration of the sale deed was present before the office of the Sub Registrar Shahabad on the agreed date but the defendant did not turn up for executing his part of agreement. Legal notice dated 18.08.2012 was sent to the defendant. Notice sent by ordinary post was duly received by defendant but the one sent by the registered post was refused by him. As the defendant failed to perform his part of contract, suit was filed.

Defendant – petitioner filed written statement raising various preliminary objections and on merits denied execution of the agreement between the parties or receipt of earnest money. Agreement was claimed to be a fake and fabricated document. It is further averred that if signatures of the defendant are found on the document, the same have been obtained by misleading. Dismissal of the suit was sought.

Following issues were framed on the basis of the pleadings:-

1. Whether the plaintiff is entitled to decree of possession by way of specific performance as prayed? OPP
2. Whether the present suit is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
4. Whether the plaintiff is stopped by his own act and conduct from filing the present suit? OPD
5. Whether the plaintiff has concealed the true and material facts from this court? OPD
6. Relief

Evidence was led by the plaintiff. However, defendant despite opportunity did not lead any evidence and the same was closed by order. Learned Gram Nyayalaya vide impugned judgment concluded that plaintiff had duly proved execution of agreement to sell dated 08.06.2009. Plaintiff had further proved his readiness and willingness to perform his part of the contract as well as receipt of

Rs.2,50,000/- by the defendant. Suit was, accordingly, decreed vide impugned judgment and decree dated 05.03.2016.

Present petitioner filed an application under Order 9 Rule 13 CPC. Thereafter, appeal challenging judgment and decree dated 05.03.2016 was filed on 19.02.2018 which was dismissed by the learned District Judge, Kurukshetra vide impugned judgment dated 02.03.2020 on the ground of delay of two years, nine months and fourteen days. Aggrieved therefrom, present writ petition has been filed in terms of Sections 33 and 34 of the Gram Nyayalaya Act.

Learned counsel for the petitioner vehemently argues that petitioner is an illiterate rustic person and that application under Order 9 Rule 13 CPC had been filed on wrong advice of the counsel instead of filing an appeal against judgment and decree dated 05.03.2016. Petitioner i.e. defendant in the civil suit had been appearing before the learned Gram Nyayalaya in person. He should be afforded an opportunity for leading evidence. Furthermore, though no evidence was led by the petitioner, the suit was decreed in an illegal manner as the plaintiff has failed to prove his case on the basis of evidence on record. Learned counsel for the petitioner contends that it is a settled position that the plaintiff has to stand on his own legs and the plaintiff has, in the present case, failed to prove his case, therefore, the matter should be remanded to the learned District Judge, Kurukshetra for the petitioner's appeal to be heard on merits.

I have heard learned counsel for the petitioner at length and have perused the file.

It is a matter of record that suit for possession by way of specific performance filed by respondent – plaintiff was decreed by the learned Gram Nyayalaya, Shahabad while holding that plaintiff – respondent had duly and successfully proved execution of agreement to sale dated 08.06.2009 as well as

receipt of earnest money of Rs. 2,50,000/- besides readiness and willingness of the plaintiff to perform his part of the contract. It is further a matter of record that no evidence was led by the defendant. Various opportunities had been afforded to the petitioner and ultimately his evidence was closed by order dated 05.03.2016. It is noticed that petitioner – defendant had appeared in person before the learned Gram Nyayalaya, Shahabad. However, application under Order 9 Rule 13 CPC was filed for challenging judgment and decree passed by the learned trial Court. The same was clearly not maintainable as the petitioner had appeared in person before the learned trial Court.

It is relevant to note at this stage that sale deed in respect to the property in dispute had admittedly been executed on 27.02.2018 in favour of the respondent – plaintiff under court orders.

In the present writ petition, it is mentioned that petitioner was proceeded exparte and he did not know about the pendency of the case, though in the very next breath, it is stated, that petitioner had gone to the Court and appeared in person but could not put up his case as he is an illiterate and poor person. Learned District Judge, Kurukshetra has specifically observed that a totally different stand has been taken by the petitioner in his application Order 9 Rule 13 CPC inasmuch as it is stated therein that petitioner – defendant had no knowledge of passing of the impugned judgment and decree dated 05.03.2016 and he came to know about the same about two or three days prior to filing of the same when it came to his notice that sale deed No. 2738 dated 27.02.2018 in respect to the property in question had been executed in favour of the respondent – plaintiff as per court orders and it is thereafter he approached his counsel and inquired about the status of the case.

To the contrary, in his appeal, petitioner, simply stated that delay in filing of appeal took place as brief of the case was misplaced at this residence. In the application under Section 5 of the Limitation Act for condonation of delay of 1019 days in filing of the appeal, petitioner has taken a plea that after passing of impugned judgment and decree that 05.03.2016, petitioner – defendant had placed brief of the case in some other documents laying at his residence and he could not trace out the same. File was traced out in May, 2018 and it is thereafter on incorrect advice of the counsel that application under Order 9 Rule 13 CPC was filed instead of appeal challenging judgment and decree dated 05.03.2016.

It is to be noted at this juncture that opportunity was afforded to learned counsel for the petitioner to furnish a copy of application under Order 9 Rule 13 CPC filed by the petitioner and the order passed thereon, besides orders in the execution proceedings. Despite opportunity, said application, the order thereon and orders in execution proceedings have not been placed on record and learned counsel for the petitioner expressed his inability to produce the same.

Learned counsel for the petitioner is unable to set forth any plausible explanation for the above said dichotomous stand taken by the petitioner. Moreover, decree in question stood satisfied in the year 2018. It is a settled position that in case of delay it is incumbent upon the applicant seeking condonation thereof to set forth plausible and sufficient cause for the same. In the present case, petitioner has miserably failed to set forth a semblance of an explanation leave alone a plausible one for delay in filing of the appeal and the same is aggravated by an unexplained and contradictory stand taken in the application under Order 9 Rule 13 CPC and application for condonation of delay in filing of the appeal.

No other argument has been addressed.

No ground for interference is made out by this Court in exercise of jurisdiction under Article 226/227 of the Constitution of India. Impugned judgment and decree dated 05.03.2016 passed by the learned Nyayadhikari, Gram Nyayalaya, Shahabad (M), Kurukshetra as well as order dated 02.03.2020 passed by the learned District Judge, Kurukshetra are upheld.

Accordingly, present writ petition is dismissed with no order as to costs.

August 25, 2021
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No