

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1051-2021 (O&M)

Date of decision:09.08.2021

Sonia Garg and another

....Petitioners

Versus

Sarita Gupta and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Parminder Singh, Advocate for the petitioners

Mr. Sunil Panwar, Advocate for the respondents

ANIL KSHETARPAL, J

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

Through this revision petition, filed under Article 227 of the Constitution of India, the petitioners (the defendants in the trial court) pray for setting aside the order dated 26.03.2021 passed by the Civil Judge, Senior Division, Karnal, while dismissing an application under Order 9 Rule 7 CPC to set aside the ex parte proceedings ordered on 23.10.2017.

Some facts are required to be noticed. The plaintiffs-respondents filed a suit for a decree of specific performance of the agreement to sell dated 14.10.2014 with respect to House no. 633, Sector 8, Urban Estate, Karnal, against the total sale consideration of Rs.1,31,09,000/- out of which Rs.62,00,000/-(Rs. 1,00,000/- in cash and

Rs. 61,00,000/- through cheque which was later on paid by RTGS). As per the agreement to sell, the sale deed was to be executed and registered on 20.02.2015. The plaintiffs have also asserted that further an amount of Rs.38,00,000/- was transferred through RTGS ie. Bank to Bank transaction. The plaintiffs have also asserted that on the request of the defendants, the remaining amount of Rs. 31,09,000/- was paid in cash on 12.02.2015 on the execution of a written endorsement. It is further pleaded that the defendants handed over the chain of original documents of the property in question to the plaintiffs including the original allotment letter, occupation certificate, conveyance deed in the name of the first allottee, further allotment in favour of Subhash Chander, original sale deed 23.03.2007 in favour of Subhash Chander, re-allotment letter in the name of Subhash Chander, original agreement to sell dated 16.10.2010 executed by the General Power of Attorney holder Shweta Aggarwal in favour of the defendants, original sale deed dated 27.10.2010 and original re-allotment letter dated 06.10.2010 in favour of the defendants. The plaintiffs further asserted that on 20.02.2015, the target date for execution and registration of the sale deed, the plaintiffs got the sale deeds scribed but the defendants inspite of assuring them on phone call, did not come forward. The plaintiff no.1 got his presence marked before the Sub Registrar.

The plaintiffs, thus, filed the suit on 24.08.2017. The defendants were issued notice through court on the address given in the suit. In the notice for appearance issued for 31.08.2017 and 08.09.2017, it was reported that the plaintiffs are not residing at the given address

anymore and the house is lying vacant and locked.

The plaintiffs filed an application under Order 5 Rule 20 CPC for serving the defendants through substituted service. The court ordered service through local proclamation and pasting of notice on the last known address of the defendants. The defendants did not appear inspite of the conducting local proclamation through the beat of drum. They were proceeded ex parte vide an order dated 23.10.2017. On 11.02.2021, the defendants-petitioners filed an application for permission to join the proceedings while asserting that they are presently residing in Dubai and now they have come to know of the pendency of the suit. They also claimed that they have also authorized Krishan Chand through a General Power of Attorney dated 04.03.2020 executed at Dubai, authorizing Krishan Chand to look after their property and defend the litigation. In para 3, the defendants stated as under:-

“3. That the applicants allowed their power of attorney Krishan Chand to deposit the deficient stamp duty on the said power of attorney and certificate was also issued in this regard and now the applicants are ready to execute the sale deed in favour of the plaintiff in terms of agreement, but the plaintiffs are delaying the matter and now the applicants want to join the proceedings.”

On the aforesaid application, learned trial court on 18.02.2021 permitted the defendants to join the proceedings and also

took a note of the statement of the defendants through their General Power of Attorney holder that they are prepared to execute the sale deed.

The operative part of the order dated 18.02.2021 is extracted as under:-

“Ld. counsel for defendants also stated that the applicants allowed their power of attorney Krishan Chand to execute the sale deed in favour of the plaintiff in terms of agreement. At this stage, ld. counsel for plaintiff also suffered a statement to the effect that he has no objection if the defendant joined the proceedings in the present case and seek some time for producing the draft sale deed in the court. He also agreed with the statement of the defendant.

Heard. In view of the statement given by the plaintiff, the case is adjourned to 02.03.2021 for submission of sale deed and the defendants are directed to execute the sale deed in favour of the plaintiff as per the agreement on or before 02.03.2021.”

Thereafter, the defendants filed an application on 22.02.2021 for setting aside the ex parte proceedings on the ground that the agreement to sell produced by the plaintiffs is false and in fact, the total sale consideration agreed to between the parties was Rs.2,61,000/-.

The aforesaid application was contested by the plaintiffs by filing a

detailed reply. The learned trial court vide an order dated 26.03.2021 dismissed the application. At the cost of repetition, it may be noted that the defendants have already joined the proceedings on 18.02.2021. However, now they pray that the entire proceedings from 23.10.2017 be set at naught.

Learned counsel representing the petitioners contends that the trial court erred in ordering substituted service through proclamation and pasting of notice on their last known address. He submits that the court ought to have served the petitioners through a publication in the newspaper. He further contends that the plaintiffs have already filed an application for permission to lead secondary evidence of the agreement to sell. He, hence, contends that the trial court erred in refusing to set aside the ex parte proceedings.

On the other hand, learned counsel representing the respondents contends that the defendants have been playing hide and seek with the plaintiffs as also with the court. He submits that the defendants, after receipt of the entire sale consideration, had handed over all the original documents relating to the property in question to the plaintiffs. However, thereafter they ran away to Dubai. He further submits that the defendants have themselves pleaded that they have authorized Krishan Chand through General Power of Attorney dated 04.03.2020. Still, no application for joining the proceedings was filed. He further contends that on 11.02.2021, the defendants through their General Power of Attorney holder Krishan Chand filed an application contending that they are prepared to execute the sale deed. The lawyer

representing the defendants also took a stand before the court on 18.02.2021. The court directed the plaintiffs to produce the draft sale deed with a direction to the parties to execute the sale deed vide an order dated 18.02.2021. Thereafter, it is the plaintiffs who took a somersault and prayed for setting aside the ex-parte proceedings. He further submits that the defendants' address given in the suit is correct. He further submits that the defendants had the knowledge of the suit on 04.03.2020 when they authorised the General Power of Attorney holder Krishan Chand. He submits that after a period of 4 years, the proceedings cannot be set at naught, particularly, when the defendants have already been permitted to join the proceedings.

It may be noted here that the State of Punjab, Haryana and Union Territory, Chandigarh, have added a proviso to Order 5 Rule 20 CPC which enables the Court to direct substituted service in such a manner as the court may deem fit. In the present case, the court after examining the various aspects, ordered service of the defendants through local proclamation (by beat of drum) and pasting of notice as provided under Order 5 Rule 20 CPC. The defendants do not dispute its correctness. It is the case of the defendants themselves that they have shifted to Dubai. Hence, there is sufficient compliance of Order 5 Rule 20 CPC. Still further, the petitioners (defendants in the trial court) have not been fair with the plaintiffs as well as the court. In a suit for specific performance of the agreement to sell, the defendants through their General Power of Attorney holder Krishan Chand moved an application on 11.02.2021 expressing their desire to execute the sale deed. Their

counsel also took the same stand before the court on 18.02.2021. Thereafter, once the defendants were permitted to join and the court directed the defendants to execute the sale deed on or before 02.03.2021, they chose to file this application. In view of the aforesaid conduct, the defendants do not deserve further indulgence.

Learned counsel representing the petitioners has failed to make out a case for interference under Article 227 of the Constitution of the India. Consequently, the revision petition is dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

09.08.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE