

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.1240 of 2021

Date of Decision: 02.07.2021

Prikshit Kappor and another

....Petitioners

VERSUS

Ajay Kumar Saini and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. B.D. Sharma, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

Heard through video conferencing.

This is a revision petition under Article 227 of the Constitution of India challenging the impugned order dated 07.02.2020 (Annexure P-7) passed by the Civil Judge (Junior Division), Amritsar.

The brief facts relevant to the present *lis* are that a suit for specific performance was filed by the plaintiff-respondent no.1 qua the agreement to sell dated 29.12.2014, stated to have been duly executed by the defendants (petitioners herein) in favour of plaintiff-respondent no.1 in respect of the house built on Plot bearing Private No.5 having a total area of 163 sq. yards, bearing *Khasra* No.384 *min*, *Khata Khatauni* No.159/292 as per *jamabandi* of the year 2011-2012, situated in the area of Tungbala sub-urban, Abadi Nehru Colony, Tehsil and District Amritsar.

Issues in the present case were framed on 27.11.2018. On 24.07.2019, PW-1 was examined in chief by way of affidavit Ex.PW-1/A. The cross-examination of PW-1 was deferred on the request of counsel for

the defendants-petitioners. PW-1 was bound down for his cross-examination on 07.08.2019 and it was made clear that only one opportunity would be granted to the defendants-petitioners to cross-examine him failing which adverse order would follow. On 07.08.2019, PW-1 was present but again not cross-examined due to the absence of counsel for the defendants-petitioners. The cross-examination of PW-1 was deferred to 09.09.2019 subject to cost of Rs.500/-. On 09.09.2019 i.e. the next date, the cost was not paid. No PW was present or examined and remaining PWs were called at the responsibility of the plaintiff-respondent no. 1. Yet again on 21.10.2019, PW-1 was present but not cross-examined and due to continuous absence of counsel for defendants-petitioners, cross-examination of PW-1 was closed as opportunity given was not availed of.

Thereafter, on 13.11.2019, PW-2 was examined-in-chief by way of affidavit Ex.PW-2/A along with the documents mentioned in the affidavit. The cross-examination was once again deferred on the request of counsel for defendants-petitioners. On the next date i.e. 11.12.2019, none appeared for the defendants-petitioners and the right to cross-examination was closed and the plaintiff-respondent no.1 was given one opportunity to conclude his evidence. The evidence of the plaintiff-respondent no.1 was closed vide order dated 19.12.2019. Thereafter, on 10.01.2020 and 22.01.2020 no DW was present. On 05.02.2020, a fresh power of attorney was filed by another advocate on behalf of the defendant-petitioner No.1 while the earlier counsel appeared for the defendant-petitioner No.2. However, no DW was present and an application (Annexure P-5) was filed for setting aside order dated

11.12.2019 whereby the right to cross-examine PW-2 was closed. Vide impugned order dated 07.02.2020 the said application (Annexure P-5) was dismissed. On 20.02.2020 no DW was present and the case was adjourned to 02.03.2020. On 02.03.2020, DWs were not summoned and the Ahlmad was warned to be careful in future and DWs were directed to be summoned as per list for 16.03.2020. On 16.03.2020, no DW was present and last opportunity was granted to the defendants-petitioners to lead their evidence. Yet again on 21.03.2020, no DW was present. However, due to outbreak of Covid-19 Pandemic presence of DW was not compelled upon and the case was adjourned to 21.04.2020. Thereafter, the matter was adjourned by order on account of situation created due to Covid-19 Pandemic and the matter was taken up on 05.02.2021 for hearing but no DW was again present and the defendants-petitioners sought another opportunity for adducing evidence. The same was granted subject to Rs.300/- as costs. On the next date i.e. 25.02.2021, no one appeared on behalf of the defendants-petitioners and they were proceeded against *ex parte*.

The application (Annexure P-5) filed on 05.02.2020 for setting aside the order dated 11.12.2019 was dismissed vide impugned order dated 07.02.2020 (Annexure P-7) which order is now sought to be challenged after a period of 1 year and 5 months by way of the present revision petition.

I have heard learned counsel for the defendants-petitioners.

The only argument raised by learned counsel for the defendants-petitioners is that they be given one opportunity to cross-examine

the witnesses as the cross-examination could not be done as their counsel did not appear and that the defendants-petitioners were not at fault. It has, however, been candidly admitted by learned counsel for the defendants-petitioners that the application (Annexure P-5) is only for setting aside the order dated 11.12.2019 whereby the right to cross-examine PW-2 was closed. Learned counsel for the defendants-petitioners has also stated that though the defendants-petitioners have been proceeded against *ex parte* vide order dated 25.02.2021, however, till date no application has been moved by the defendants-petitioners to get the *ex parte* proceedings set aside.

A perusal of orders passed by the Trial Court clearly reveals that the defendants-petitioners had been totally negligent in pursuing to their case. Despite a number of opportunities being given, PW-1 and PW-2 were not cross-examined. Thereafter, an application was moved for setting aside the order dated 11.12.2019 whereby the right to cross-examine PW-2 was considered as given and nil availed. The impugned order itself was passed on 07.02.2020 and there is no explanation forthcoming as to why the said order was not challenged for a period of 1 year and 5 months.

A litigant cannot be permitted to cast the entire blame on the advocate. A litigant is expected to be vigilant, which does not appear to be so in the present case. *Vigilantibus Et Non Dormientibus Jura Subveniunt* - law assists only those who are vigilant and not those who sleep over their rights. Equity does not relieve a person of the consequences of his or her own carelessness. A court of equity would not assist a person in

extricating himself or herself from the circumstances that he or she has created.

In the present case, the lackluster attitude of the defendants-petitioners is writ large. The casualness with which the case is being pursued is also apparent from the fact that though an application was moved only for setting aside the order dated 11.12.2019 whereby the right to cross-examine PW-2 was considered as given and nil availed, no steps were taken to set aside the order dated 21.10.2019 whereby cross-examination of PW-1 was closed as opportunity given was not availed of. Further, as stated by the counsel for the defendants-petitioners, no application has been moved by them to even get the *ex parte* proceedings set aside.

There is no error in the exercise of jurisdiction by the Trial Court while passing the impugned order (Annexure P-7). No ground either in equity or in law has been made out for this Court to interfere in the impugned order dated 07.02.2020 (Annexure P-7). The revision petition being devoid of any merit is hence dismissed.

**(ALKA SARIN)
JUDGE**

2nd July, 2021
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO