

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-2397 of 2021 (O&M)

Date of decision: 14.10.2021

Jagtar Singh

...Petitioner

Versus

Karnail Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Prashant Bansal, Advocate for the petitioner.

H.S. MADAAN, J.

Case taken up through video conferencing.

By way of filing the present revision petition, petitioner Jagtar Singh prays for setting aside order dated 21.09.2019, passed by Civil Judge (Jr. Divn.) Rajpura, dismissing the application dated 10.08.2018 filed by the petitioner for impleading him as a party under Order 1 Rule 10 CPC in counter claim filed by respondent No.2 in the present petition Arun Kumar Attri against respondent No.1 in the present petition Karnail Singh as well as for setting aside order dated 17.12.2019 passed by Civil Judge (Jr. Divn.) Rajpura, striking off the defence of the petitioner.

I have heard learned counsel for the petitioner besides going through the record.

It transpires that plaintiff Karnail Singh had brought a suit against defendants Jagtar Singh-present petitioner as well as Arun Kumar Attri, seeking a declaration that agreement to sell dated

04.01.2018 regarding agricultural land measuring 53K-8M out of 297 K-15M situated at Village Wazirabad, Tehsil Rajpura, District Patiala along with electric tubewell and passage is in-operative, illegal, null and void for the reason that defendants had failed to get the sale deed executed in their favour as per terms and conditions of the agreement and earnest money paid by the defendants to the plaintiff to the tune of Rs.60,00,000/- has been forfeited.

On getting notice, both the defendants had appeared and sought adjournments for filing of written statements. On 17.12.2019, neither the written statement was filed by defendant No.1 nor costs were paid, observing that statutory period of 90 days for filing written statement by defendant No.1 had already elapsed and it appeared that defendant No.1 did not want to file written statement, therefore, defence of defendant No.1 was ordered to be struck off. On the basis of plaint and written statement filed by defendant No.2, issues on merits were framed and the case was adjourned to 10.02.2020 for evidence of plaintiff. Defendant No.1 is aggrieved by these orders.

The operative part of impugned order dated 21.09.2019 contained in paras No.5 to 8 runs as follows:-

“5. Perusal of file reveals that present suit has been filed by Karnail Singh plaintiff against the present applicant/defendant no.1 Jagtar Singh and Arun Kumar Attri defendant no.2 on the basis of agreement to sell dated 4.1.2018. Arun Kumar Attri defendant no. 2 has filed counter claim in this case against the plaintiff. Perusal of the counter claim filed by Arun Kumar Attri against Karnail Singh reveals that he has filed counter claim on the basis of

agreement to sell dated 04.01.2018 for a sum of Rs.42 lacs, meaning thereby, earnest money which is referred as 60 lacs (both by plaintiff in his plaint and defendant no.2/counter claimant Arun Kumar Attri in his counter claim) by specifically referring that Rs. 42 lacs has been received by the counter claimant Arun Kumar and Rs. 18 lacs by defendant no.1 Jagtar Singh and counter claim has been filed by one of the defendant i.e. defendant no.2 Arun Kumar Attri for Rs.42 lacs out of the total earnest money i.e. Rs. 60 lacs. Even court fee also affixed as per recovery/counter claim, so claimed by defendant no.2 Arun Kumar/claimant.

6. Moreover, contention of defendant no.2/counter claimant is that plaintiff Karnail Singh has claimed that defendant no. 1 Jagtar Singh paid earnest money to the tune of Rs. 18 lacs which has already been returned to defendant no.1 Jagtar Singh by the plaintiff. So he has no right or title in the earnest money of remaining land i.e. 42 lacs plus damages of Rs. 18 lacs alongwith interest so claimed by him and this contention of learned counsel for defendant no.2/counter claimant hold force as it is evident from the application moved by the applicant/defendant no.1 Jagtar Singh as per para no.2 of his application, it has been mentioned by the applicant/defendant no.1 Jagtar Singh that he is ready to execute and register the sale deed and he requested many times to the counter claimant/defendant no. 2 Arun Kumar Attri to get execute the sale deed in favour of plaintiff but Arun Kumar Attri claimant/defendant no.2 was not ready do so. So in this scenario and the fact that counter claim has been filed in respect of Rs. 42 lacs only being earnest money towards defendant no.2/applicant as per agreement to sell dated 04.01.2018.

7. So, in these eventualities, application moved by defendant no.1/applicant to array him as counter claimant

with defendant no.2 deserves to dismissed.

8. Consolidating my aforesaid discussion the application moved by applicant/defendant No.1 is devoid of merits and the same is hereby dismissed.”

However, I fail to find any fault with the order in question since the present petitioner who is defendant No.1 in the civil suit had failed to file written statement despite getting opportunities and had also not paid the costs imposed upon him. The trial Court was justified in striking off his defence and no fault can be found with the order passed by the trial Court in doing so. The order in question was passed on 17.12.2019, whereas, the present revision petition has been filed on 12.10.2021 i.e. after a period of 01 year and 10 months. No plausible or justifiable reason for late filing the revision petition could be given by learned counsel for the petitioner. Even if it is taken that normal life was disrupted due to outbreak of COVID-19 then the spread had mainly started in March 2020 and thereafter continued for a considerable time but thereafter, the things started improving. The working in the Courts which was initially hampered to the great extent resumed in the form of virtual hearings and then physical hearings. Therefore, the petitioner cannot take up the plea that on account of outbreak of COVID-19, the revision petition could not be filed in time. It has been done belatedly without giving a justifiable reason for the delay.

As far as the second order which is being impugned is concerned, the same also passes judicial scrutiny successfully.

Therefore, I do not find any merit in the instant revision

petition. The same stands dismissed accordingly.

14.10.2021

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(H.S. MADAAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No