

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

CR-6529-2019 (O&M)

Date of decision: 18.08.2022

Jitender Kumar

....Petitioner

Versus

Surender Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagdish Manchanda, Advocate for the petitioner

Mr. Amit Arora, Advocate for respondent no. 2, 3 and 5

ANIL KSHETARPAL, J (Oral)

The petitioner herein is the plaintiff in a suit for specific performance of the agreement to sell with a prayer to grant refund of double of the earnest money as per the contract. There are as many as five defendants in the suit. At one stage, defendant no.1 submitted that he is prepared to execute the sale deed. Subsequently, defendant no.2, 3 and 5 also made a statement. Thereafter, the case was adjourned repeatedly as the learned counsel representing defendant no.4 sought time to seek instructions. Ultimately, defendant no.4 on 24.10.2017 made a statement that he is also prepared to execute the sale deed which was reiterated in the order dated 07.11.2017. Again the case was adjourned for execution of the sale deed. Thereafter, defendant no.2, 3 and 5 were proceeded against ex parte. The court framed the issues in the suit. Subsequently, on 28.08.2019 the court dismissed the suit in default for want of evidence under Order XXVII Rule 3 of the Code of Civil Procedure, 1908.

Heard the learned counsel representing the parties at length

and with their able assistance perused the paperbook.

Learned counsel representing the petitioner contends that the Presiding Judge was forcing the petitioner to accept the amount of earnest money though he is entitled to recover Rs.4,00,000/- as per the contract. He submits that the petitioner after paying the court fee, has filed the suit and was prepared to purchase the property provided all the defendants executed the sale deed as per the agreement.

On the other hand, learned counsel representing the respondent submits that the plaintiff suffered a statement on 28.08.2019 that he does not wish to lead any evidence.

This Court has perused the statement of the plaintiff recorded on 28.08.2019. This statement was recorded in the absence of his counsel. Once the plaintiff was represented by counsel and on the request of the parties, the court kept adjourning the matter in order to give them opportunity to settle the matter, the order passed dismissing the suit in default, appears to be harsh. No doubt, the courts are required to dispose of the cases on earliest opportunity, however the parties have to be granted sufficient opportunity to lead evidence. The Presiding Judge is required to maintain the balance between the speedy disposal and fair opportunity to the parties to prove their case. In the facts of the case, this Court is of the view that the Presiding Judge has failed to maintain the same. Hence, the order under challenge is set aside. Let one opportunity be granted to the petitioner to conclude his entire evidence, subject to payment of costs of Rs.5,000/- which was imposed vide order dated 26.08.2019.

The parties through their counsel are directed to appear before the trial court on 15.09.2022. The suit filed by the plaintiff shall stand restored to its original number.

The revision petition stands allowed.

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

18.08.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE