

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

CR-5255-2022

Date of decision:-17.11.2022

Ram Narain

...Petitioner

Versus

Satish Kumar

...Respondent

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

Present: Mr.Sushil Kumar Verma, Advocate
for the petitioner.

H.S. MADAAN, J.(ORAL)

1. Briefly stated, facts of the case are that plaintiff had brought a suit for recovery of Rs.5,40,000/- with interest @ 18% per annum against defendant Ram Narain alleging that the latter had committed breach of agreement to sell dated 6.3.2009, though he had received a sum of Rs.5,40,000/- as earnest money out of total price agreed as Rs.5,50,000/-. That civil suit was filed on 12.3.2011. Notice of the suit was ordered to be issued for 28.7.2011, which was served, however, defendant did not put in appearance and was proceeded against ex-parte. After recording evidence, the suit of the plaintiff was decreed ex-parte on 15.7.2013 for recovery of Rs.5,40,000/- with interest @ 6% per annum from the date of execution of agreement to sell till realization of that amount.

2. Thereafter, the plaintiff filed an execution application on 12.2.2019 and notice thereof was given to defendant/JD for 18.3.2019. However, he did not appear despite service and was proceeded against ex-parte. The decree holder had filed an application for detaining JD in civil imprisonment on 29.4.2019. On 27.5.2019 JD had filed an application for setting aside of ex-parte order dated 18.3.2019. It was allowed on 29.8.2019, subject to the payment of cost of Rs.300/-. Thereafter, JD submitted objections to the execution, which were dismissed on 18.11.2021. Notice of the application under Order 21 Rule 37 CPC was issued to JD on 27.5.2022 and JD did not file any reply, though it was submitted on his behalf that he had moved an application under Order 9 Rule 13 CPC for setting aside of ex-parte judgment and decree dated 15.7.2013. A request was made for adjourning the case for that purpose. The Executing Court of Additional Civil Judge (Sr.Divn.), Dabwali observed that there was no justification for doing so, therefore the request for adjournment was declined and application for sending JD to civil imprisonment was allowed, subject to deposit of subsistence allowance as per rules and warrants in that regard were ordered to be issued for 26.9.2022. Such order was passed on 12.9.2022.

3. This order left the JD aggrieved and he has approached this Court by way of filing the present revision petition praying that order under revision be set aside by way of acceptance of the revision petition.

4. I have heard learned counsel for the revisionist besides going through the record and I find that the conduct of the revisionist is such that he does not deserve any sympathy in the matter. Firstly on getting

notice of the suit filed by the plaintiff Satish Kumar against him on 12.3.2011, he opted not to put in appearance in the Court and was proceeded against ex-parte. The plaintiff got ex-parte judgment and decree in his favour on 15.7.2013. When he filed an execution application for implementation of ex-parte judgment and decree, the JD put in appearance and made every attempt to stretch the proceedings. Ultimately, he moved an application for setting aside of ex-parte judgment and decree on 9.5.2022 i.e. after more than 11 years of the filing of the suit by the plaintiff and 9 years of passing of ex-parte judgment and decree and three years of putting in appearance in the execution proceedings. The decree holder has not been able to get the decree passed in his favour executed despite passing of more than 9 years, which reflects badly upon our judicial system showing that it provides a lot of latitude to a litigant to stretch the proceedings for years and years together. Now the attempt of revisionist/JD is to prolong the proceedings to the maximum extent. The plaintiff had filed suit on the basis of complaining breach of agreement to sell dated 6.3.2009 i.e. more than 13 years earlier. The decree holder is just going to the Courts repeatedly seeking implementation of the decree and the Courts have not been able to grant necessary relief to him so far. Passing a paper decree in favour of a litigant hardly amounts to dispensing justice to him. The justice is done when a decree is finally executed and not before that. The attempt by the revisionist to stretch the proceedings further deserves to be thwarted. The Execution Court was justified in declining request for adjourning the execution proceedings during the pendency of the application for setting aside of ex-parte judgment and

decree, which as it comes out has been filed after more than 9 years thereof.

5. The revision petition is thus found to be without merit and is dismissed accordingly.

17.11.2022

Brij

(H.S.MADAAN)**JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No