

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

CR-4406-2017(O&M)

Date of decision:-31.1.2023

Lakhvir Singh

...Petitioner

Versus

Karamjit Kaur

...Respondent

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

Present: Mr.Inderjit Sharma, Advocate
for the petitioner.

Mr.J.K. Singla, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, the facts of the case are that plaintiff Karamjit Kaur had brought a suit against defendant Lakhvir Singh seeking specific performance of an agreement to sell dated 15.6.2005 said to have been entered into between the parties and in the alternative suing for recovery of Rs.1,12,500/- along with interest @ 12% per annum.

2. As per the case of the plaintiff, the defendant being owner to the extent of 1/16th share in the land measuring 4 kanals 10 marlas situated at village Mandi Kalan, Tehsil Phul, District Bathinda (fully detailed in head-note of the plaint) had agreed to sell the same with the plaintiff @ Rs.2 lakhs per acre receiving Rs.1,12,500 as earnest money and the final

date for execution and registration of the sale deed was fixed as on or before 12.6.2006; the defendant had put the plaintiff in possession of the property in question at the time of entering into agreement to sell. According to the plaintiff, she has always been ready willing to perform her part of the contract and on the date fixed i.e. on 12.6..2006, she had reached the office of Sub Registrar, Rampura and waited for the defendant but the defendant did not turn up. The plaintiff requested the defendant to execute the sale deed but to no effect. As such, she had brought the suit in question.

3. Notice of the suit was given to the defendant, who put in appearance, filing the written statement contesting the suit denying having entered into any agreement to sell with the plaintiff or putting the plaintiff in possession of the land, which was subject matter of the agreement. According to the defendant the agreement to sell set up by the plaintiff was a forged and fabricated document and the defendant had not received any amount from the plaintiff as earnest money. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

4. Issues on merits were framed. During the proceedings of the suit, the defendant absented from Court and was proceeded against ex-parte vide order dated 12.1.2011. During the course of her evidence, the plaintiff got her statement recorded as PW1 and repeated on oath her case as given in the plaint. She further examined Bant Singh as PW2, an attesting witness of agreement to sell Ex.P2, who supported her case on material points. Thereafter, the plaintiff closed her ex-parte evidence on 4.2.2011.

5. After hearing arguments, the trial Court decided issue No.1 in favour of the plaintiff and against the defendant, issues No.2 and 3 were decided in favour of the plaintiff against the defendant. As a result of findings on issues, vide judgment and decree dated 17.3.2011, suit of the plaintiff was decreed *ex parte* with costs and she was found entitled to specific performance of the agreement to sell in question. A direction was issued to the defendant to execute the sale deed regarding subject matter of the agreement to sell in favour of the plaintiff within a period of two months from the date of judgment. The plaintiff was directed to offer the balance sale consideration amount to the defendant within a period of one month from the date of judgment and in case the defendant refused to receive the same, the plaintiff shall deposit the same in the Court.

6. Thereafter, the defendant had approached the Court filing an application under Order 9 Rule 13 CPC for setting aside the *ex-parte* judgment and decree stating that the defendant had engaged Sh.C.S. Bhambra, Advocate as his counsel and he had appeared in the Court only once or twice and he believed that his counsel would be appearing and in case personal appearance of defendant was required, then his counsel would intimate him. According to the defendant, an official of the Court came to his house and took his thumb impressions on one chit stating that on 30.7.2011, the Court had called him there; the defendant being an illiterate person having no knowledge of law, accordingly went to the Court on 30.7.2011 and came to know that the Advocate engaged by him, namely, Sh.C.S. Bhambra, Advocate had died and on account of non appearance of the counsel for the defendant, the defendant had been

proceeded against ex-parte and an ex-parte judgment and decree had been passed against him. He by moving an application sought setting aside of ex-parte judgment and decree passed on 17.3.2011.

7. Notice of the application was given to the plaintiff, who put in appearance and filed a written reply contesting the application contending that Sh.Jasvir Singh Mann and Sh.Kulbinder Singh Sidhu were associates of Sh.C.S. Bhambra, Advocate engaged by the defendant and they had been appearing in the suit; the defendant had appeared though his counsel Sh.Jasvir Singh Mann and Sh.Kulbinder Singh Sidhu on 9.9.2009 and filed written statement and on 1.11.2010, the plaintiff examined witnesses but thereafter the defendant/applicant intentionally did not put in appearance to prolong the matter and the story set up by him in the application is wrong; as a matter of fact, he had knowledge about the ex-parte proceedings right from the beginning. Refuting the remaining assertions, the respondent/plaintiff prayed for dismissal of the application.

8. For proper adjudication of the controversy between the parties following issues were framed by the trial Court:

1. Whether there are sufficient grounds for setting aside the exparte judgment and decree dated 17.3.2011 passed in Civil Suit No.86 dated 26.5.2009? OPP.
2. Whether the application is not maintainable in the present form? OPR.
3. Whether the application is not filed within the period of limitation? OPR.
4. Relief.

9. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

10. After hearing arguments, issue No.1 was decided against the applicant and in favour of the respondent, issues No.2 and 3 were not pressed by respondent/plaintiff during the arguments, as such were held to be not pressed. Consequently, the application was dismissed vide order dated 16.10.2014.

11. Feeling aggrieved, the defendant had preferred an appeal against the said order before District Judge, Bathinda, which was assigned to Additional District Judge, Bathinda, who vide judgment dated 6.4.2017 dismissed the same.

Thereafter, the defendant has approached this Court by way of filing the present revision petition, notice of which was given to the respondent, who put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record and I do not find any merit in the revision petition.

13. The petitioner, who was defendant before the trial Court had put in appearance there on getting notice of the suit and had filed a written statement contesting the suit. Issues on merits were framed and thereafter he absented from the Court. The reasons given by him was that his counsel Sh.C.S. Bhambra, Advocate had expired, therefore, the defendant was marked absent and proceeded against ex-parte. However, these contentions have been found to be without merit by the trial Court. The trial Court while deciding issue No.1 in the application did not find

sufficient grounds for setting aside the ex-parte judgment and decree observing that it was the duty of the defendant to give instructions to his counsel whether to appear or not and as regards plea of death of his counsel Sh.C.S. Bhambra, Advocate, he alone had not been appearing on behalf of defendant, rather his associate Sh.Kulbinder Singh Sidhu was also appearing, which is duly proved by power of attorney Ex.R1 as well as order dated 1.11.2010 Ex.R2, where presence of defendant was marked through counsel Sh.Kulbinder Singh Sidhu, Advocate.

14. The First Appellate Court has observed that the applicant had executed power of attorney in favour of Sh.C.S. Bhambra, Advocate and had authorised the said advocate and Sh.Kulbinder Singh Sidhu to appear on his behalf, further the power of attorney bears signatures of Sh.C.S. Bhambra, Advocate and Sh.Kulbinder Singh Sidhu, Advocate. When the appellant appeared as AW1, he had admitted in his cross examination that he had engaged Sh.C.S. Bhambra, Advocate and Sh.Kulwinder Singh Sidhu, Advocate, who also used to sit with him. He stated that his counsel died in the year 2012 and he had received summons after 2012. The appellate Court observed that it cannot be said that case could not pursued only because of death of Sh.C.S. Bhambra, Advocate because Sh.Kulbinder Singh Sidhu, Advocate was also authorised to appear and contest the case on behalf of the defendant. The submission made on behalf of the defendant that he was not having any knowledge regarding the ex-parte proceedings was found to be lacking merit. It was observed that once the defendant had appeared in the Court and filed written statement and was contesting the suit, it was his duty to know about the

status of the case and even if his counsel had asked him not to come on each and every date of hearing, he himself was responsible for enquiring from his counsel as he was knowing about the pendency of the suit.

15. Learned counsel for the respondent has contended that on the basis of judgment and decree passed by the trial Court, the sale deed has already been executed in favour of the defendants way back on 12.8.2011. He has placed on record copy of that sale deed contending that it being so, the revision petition has become infructuous.

16. The order passed by the trial Court, which was duly affirmed by the learned Additional District Judge, Bathinda vide her order are quite detailed and well reasoned and based on correct interpretation of law. Those do not suffer from any illegality or infirmity. Thus no ground is made out for setting aside those orders and application for setting aside of ex-parte judgment and decree was rightly dismissed.

17. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

31.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No