

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

106

CR-1938-2022

Date of decision : 27.01.2023

Sikander Singh

... Petitioner

Versus

Sushil Kumar and another

.. Respondents

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Randeep Singh Waraich, Advocate for the petitioner.

Anupinder Singh Grewal, J. (Oral)

The petitioner has challenged the orders of the Courts below dated 09.09.2014 and 10.12.2019 (Annexures P-1 & P-2 respectively) whereby his application under Order 9 Rule 13 CPC for setting aside the *ex parte* decree dated 05.04.2011 has been dismissed.

Learned counsel for the petitioner/defendant submits that the service was not effected upon the petitioner in a suit filed by respondents/plaintiffs for recovery of Rs.23,29,375/- which had been decreed *ex parte*. He had preferred an application under Order 9 Rule 13 CPC for setting aside the *ex parte* decree but the same was erroneously dismissed.

Heard.

The respondents/plaintiffs had filed a suit for recovery of Rs.23,29,375/- against the petitioner/defendant in the year 2009 stating that an agreement to sell dated 14.03.2006 had been entered between them as the petitioner/defendant had agreed to sell 33 kanals 10 marlas of land situated at Sardulgarh. The last date for execution of the sale deed was 05.04.2006 which was later extended to 11.08.2006. The plaintiffs were stated to have

appeared before the Sub-Registrar and got their presence marked but the petitioner/defendant did not do so. With mutual consent, the agreement to sell (Ex.P1) is stated to have been cancelled on 15.09.2006 and the petitioner/defendant had agreed to return the earnest money of Rs.25,00,000/- along with interest. The petitioner/defendant is stated to have paid only a sum of Rs.10 lacs to the plaintiffs and failed to return the outstanding amount. The suit for recovery had been filed by the respondents/plaintiffs in the year 2009 which was decreed *ex parte* on 05.04.2011 (Annexure P-3) as the petitioner/defendant did not appear before the trial Court.

An application under Order 9 Rule 13 CPC for setting aside the *ex parte* decree (Annexure P-3) had been preferred by the petitioner in the year 2012 which was dismissed by the trial Court on 09.09.2014 (Annexure P-1) holding that the petitioner/defendant did not appear despite the summons being affixed on the gate of his house. The Process-server Chamkaur Singh, who had conducted *munadi* on 19.08.2009, had been examined as RW-3. The copies of summons (Ex.R-1), report on the back of the summons (Ex.R2), copy of munadi (Ex.R-4) and his report(Ex.R-5) had been proved on record. He had also been cross-examined extensively but no material contradiction had been reflected in his statement. The appeal preferred by the petitioner thereagainst was also dismissed by the Appellate Court on 10.12.2019 (Annexure P-2).

Therefore, as the petitioner/defendant had not been able to put forth out any good ground for the acceptance of his application under Order 9 Rule 13 CPC for setting aside the *ex parte* decree, the same was rightly rejected. Furthermore, the instant revision petition was preferred by the petitioner in the year 2022, almost after 2 ½ years, challenging the impugned

orders dated 09.09.2014 and 10.12.2019 (Annexures P-1 & P-2 respectively) passed by the Courts below declining his application under Order 9 Rule 13 CPC.

Consequently, the petition stands dismissed being devoid of any merit.

(ANUPINDER SINGH GREWAL)
JUDGE

January 27, 2023
A. Kaundal

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