

Sr. No.120

Date of Decision : August 08, 2023

VS.

Sukhjit Singh Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sandeep Godara, Advocate
for the petitioner.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the impugned order dated 03.09.2022 (Annexure P-3), passed by learned Additional District Judge, Hoshiarpur, whereby appeal filed by the petitioner against the order dated 15.12.2015 (Annexure P-2), passed by learned Civil Judge (Junior Division), Dasuya, has been dismissed. Further challenge is to the order dated 15.12.2015 (Annexure P-2), whereby application under Order 9 Rule 13 CPC , filed by the petitioner for setting aside the ex-parte judgment and decree dated 02.01.2009 (Annexure P-1) has been dismissed.

2. The brief facts necessary for disposal of the present revision petition are that the respondent file a suit for specific performance on the basis of an agreement to sell. The petitioner was proceeded against ex-parte on the ground that the petitioner failed to appear before the Court despite

service. The said suit was decreed vide judgment dated 02.01.2009 (Annexure P-1). On coming to know about the said judgment and decree, petitioner filed application under Order 9 Rule 13 CPC for setting aside the ex-parte decree. The said application was dismissed by the learned Civil Judge (Junior Division), Dasuya, vide order dated 15.12.2015 (Annexure P-2). Petitioner also filed appeal, which was also dismissed vide judgment dated 03.09.2022, passed by learned Additional District Judge, Hoshiarpur (Annexure P-3).

3. Learned counsel for the petitioner has argued that report on the summons was procured by the respondent in connivance with serving official by forging signatures of the petitioner on the summons. The summons were not accompanied by a copy of plaint. There was no witness at the time of putting signatures on the summons. The learned Courts below have failed to appreciate that summons were not duly served and the judgment and decree deserves to be set aside.

4. I have heard submissions made by learned counsel for the petitioner and perused the case file.

5. The learned Trial Court, on the application of the petitioner, framed the following issues :-

“1. Whether there are sufficient grounds to set aside the ex parte judgment and decree dated 02.01.2009? OPP

2. Relief.”

6. The petitioner himself stepped into the witness box as AW-1 and produced documents. The burden was on the petitioner to prove that the

signatures on the summons were forged. Learned Trial Court held that the petitioner had denied the signatures on the summons and in the cross-examination, denied his signatures even on the application and also on the affidavit and Power of Attorney given to his Advocate. So, the conduct of the petitioner is required to be seen that he has denied his signatures on all the documents which have been produced by him. A party is required to stand on his own legs. No handwriting expert was examined to prove that signatures of the petitioner on the summons were forged. The other point raised is that copy of the plaint was not annexed with the summons. The learned Trial Court held in its order that perusal of summons revealed that a copy of the plaint was duly attached along with the summons. Since the petitioner received the summons and put his signatures thereon in receipt of summons, he has failed to prove that he was not served in the suit. So, the case of the petitioner is an after-thought and deserves to be rejected.

7. In the light of the above discussion, there is no ground to disagree with the findings recorded by the learned Courts below. Thus, the revision petition in hand is found to be without any merit and the same is hereby dismissed.

8. Pending applications, if any, shall stand disposed of along with this judgment.

August 08, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.