

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No.5449 of 2019 (O&M)****Date of Decision: 02.11.2023**

Gurcharan Singh and Another

... Petitioner(s)

Versus

Sohan Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. J.S.Brar, Advocate
for the petitioner(s).Mr. S.P.S. Aulakh, Advocate
for the respondent No.1.**Anil Kshetarpal, J.**

1. In this revision petition filed under Article 227 of the Constitution of India, the petitioners are the defendant No.2 and 3 in the suit filed by the plaintiff before the trial Court.

2. The plaintiff has filed a suit for possession by way of specific performance of the agreement to sell. The defendant No.2 and 3 had purchased the property from the defendant No.1 through the registered sale deed. The plaintiff claims that a prior agreement to sell is in his favour. The defendant No.2 and 3 appeared in the suit through Mr.H.S.Narang, Advocate, who had filed the written statement. The defendant No.2 and 3 claim that their counsel had advised them not to be present in the Court on each and every date and as and when their presence is required, the intimation will be given to them by their counsel. They further claim that

they came to know of the decree a day before the filing of the application as

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the plaintiff (decree holder) proclaimed in the area that he has been granted the decree.

3. Both the Courts below have dismissed the application on the following grounds:-

- i) The application has been filed after a period of one year from the date of the decree.
- ii) The petitioners have not asserted about the date of their knowledge.
- iii) No separate application for condonation of delay has been filed.
- iv) The defendant No.1 and 2 have not disclosed the date on which the decree holder proclaimed that he has been granted the decree.

4. By *ex parte* judgment and decree, the sale deed executed in favour of the defendant No.2 and 3 has been set aside.

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

6. The learned counsel representing the petitioners, while drawing the attention of this Court to para 1, 3 and 4 of the application, submits that the defendant No.2 and 3 did specifically assert their knowledge only a day before the date on which the application was filed. The learned counsel submits that both the Courts below have erred in overlooking the aforesaid averment. The learned counsel further submits that filing of a separate application for condonation of delay is not mandatory, once, the assertions in the application are sufficient to make out a ground for condoning the delay.

The learned counsel further submits that both the Courts below have erred in

overlooking the pleadings of the defendant No.2 and 3 while filing an application under Order XI Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”).

7. On the other hand, the learned counsel representing the respondent submits that the defendant No.2 and 3 filed an application under Order XI Rule 13 CPC, which was subsequently amended. He further submits that in the unamended application, the defendant No.2 and 3 pleaded that they never appeared in the suit.

8. This Court has considered the submissions. Para No.1, 3 and 4 of the amended application under Order XI Rule 13 CPC are extracted as under:-

“1. That the applicants/Judgment Debtors No.2 and 3 has come to know yesterday that above mentioned titled execution petition is pending before this Hon'ble court and in the parte decree above mentioned case an Ex- has been passed by the Court Sh.Gurbir Singh, PCS, Civil Judge, (Jr.Div) Ludhiana, against the applicants/judgment debtors No.2 and 3 vide order dated 05.08.2013 in civil suit no:521 of 24.8.2004.

2. XXXX XXXX XXXX XXXX XXX

3. The applicants/Judgment debtors No.2 and 3 only came to know about the passing of the ex parte decree / order only on yesterday, when a decree holder started proclaiming in the locality that he has obtained ex-parte judgment and decree dated 5.8.2013 against the J.Ds. NO.2 and 3 and or further enquiry the applicants/J.Ds.No.2 and 3 came to know that due to negligence of earlier counsel of the defendants no.2 and 3, the decree holder, has succeeded in getting ex parte judgment and decree dated 05.08.2013 against the applicants/J.Ds No.2 and 3 from this Hon'ble Court and has filed this execution

application for execution of the said decree. Had the applicants/judgment debtors No.2 and 3 knew that their earlier counsel has absented from the court and has got themselves proceeded against ex parte and thereafter ex parte decree has been passed against them. The absence of the applicants/judgment debtors No.2 and 3 from this Hon'ble Court is neither intention nor deliberate.

4. That the present application is within limitation from the date of knowledge of the passing of ex parte judgment and decree because prior to yesterday, the applicant/Judgment debtor had no knowledge about the passing of the said ex parte judgment and decree.”

9. Thus, both the courts below have erred in overlooking the fact that the defendant No.2 and 3 have asserted the date on which they derived knowledge of the decree. Thus, the orders passed by both the Courts below suffer from non-reading of the contents of the application.

10. By now, it is well settled that filing of a separate application for the condonation of delay is not necessary if the contents of the application make sufficient disclosure with regard to the grounds for condoning the delay. In this case, the defendant No.2 and 3 have disclosed the reasons for filing the application after a period of one year. The Courts were required to examine the sufficiency of the reasons. However, both the Courts below have failed to do the same.

11. As regards the next reason, it would be noted that the defendant No.2 and 3 have disclosed the date and source of their knowledge. In para 3 of the application, it has been stated that the decree holder has started proclaiming in the locality that he has obtained the *ex parate* judgment and

decree. Thus, the petitioners have disclosed the place where the decree holder proclaimed about the decree.

12. In this case, the defendant No.1 has already sold the property. It is evident that the rights of the petitioners are adversely impacted by the decree. The defendant No.1 did not file any appeal before the First Appellate Court.

13. Here is a case where the registered sale deed executed by the defendant No.1 in favour of the defendant No.2 and 3 has been set aside with respect to the land measuring 9 kanals and 10 marlas. They shall suffer an irreparable loss if the Court does not grant them any opportunity to contest the case. Cumulatively, taking into consideration all these facts, the impugned order passed by the trial court, which, in appeal, was affirmed by the First Appellate Court is set aside. The *ex parte* judgment and decree passed against the petitioners is set aside. The trial Court is directed to decide the suit afresh after granting an opportunity to the petitioners to contest the case within a period of 6 months. The parties, through their learned counsel, are directed to appear before the trial court on 28.11.2023.

14. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 02, 2023

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No