

2023:PHHC:094257

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

133

CR-4372-2022 (O&M)
Date of Order: 25.07.2023

BHUPINDER SINGH (DECEASED) THROUGH ITS LRS

.Petitioners

Versus

GURMAIL SINGH AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Karan Singla, Advocate,
for the petitioner.**

ANIL KSHETARPAL, J

1. The correctness of the findings of fact arrived at by the courts below while dismissing the application under Order IX Rule 13 CPC, to set aside the ex-parte decree has been dismissed by both the courts below.
2. A suit for possession by way of specific performance of the agreement to sell was filed on 16.07.2009. Late Sh. Bhupinder Singh (deceased) was served with the notice of the suit. He contested the suit through Sh. S.S.Janagal, Advocate. Due to non-appearance of the defendant as well as his counsel, the defendant was proceeded against ex-parte on 04.01.2012. An application under Order IX Rule 7 CPC was filed to set aside the ex-parte order which was allowed on 15.02.2013, subject to payment of costs, however, the defendant neither paid the costs nor he defended the case. His counsel also pleaded no instructions. Ultimately, on appreciation of the evidence, the suit was decreed ex-parte vide judgment and decree dated 04.05.2013. After the suit was decreed ex-parte, an application under Order IX Rule 13 was filed, as already noticed and it has been dismissed by both the courts below.

-2-

3. The learned counsel representing the petitioner submits that the original defendant has died and this revision petition has been preferred by his legal representatives. He submits that one opportunity be given to the petitioners to defend the suit.

4. This court has considered the submission of the learned counsel representing the petitioner.

5. Before an application under Order IX Rule 13 CPC to set aside ex-parte judgment and decree is allowed, the parties are required to prove that there were sufficient reasons which prevented them from defending the suit. In absence thereof, it would not be appropriate for the court to set aside the ex-parte decree given on well founded grounds. In this case, the defendant was granted an opportunity when the ex-parte proceeding were set aside subject to payment of costs. However, the defendant failed to avail the aforesaid opportunity as neither the costs was paid nor his counsel appeared to defend.

6. Keeping in view of the aforesaid facts, no ground to interfere is made out.

7. Dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

July 25, 2023

nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO