

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

Civil Revision No.5510 of 2022

Date of Decision: 04.01.2023

Rahul Sachdeva

...Revisionist-Petitioner

Versus

Tarvinder Pal Singh & Others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Sanjeev Soni, Advocate,
for the revisionist-petitioner.

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MEENAKSHI I. MEHTA, J.

By way of the instant revision petition, the petitioner-defendant No.4-applicant (here-in-after to be referred as 'the applicant') has assailed the order dated 12.12.2016 (Annexure P-2) passed by learned Civil Judge (Senior Division), Amritsar (for short 'the trial Court'), whereby the application moved by him and his co-applicant-defendant No.3 under Order 9 Rule 13 read with Section 151 CPC with a prayer to set aside the *ex-parte* judgment and decree dated 31.01.2011, has been dismissed and he (applicant) has also laid challenge to the judgment dated 14.09.2022 (Annexure P-4), handed down by learned Additional District Judge, Amritsar, (for short 'the Appellate Court'), dismissing the appeal preferred by him against order Annexure P-2.

2. Shorn and short of unnecessary details, the facts, culminating in the filing of the present revision petition, are that respondent No.1-plaintiff (here-in-after to be referred as 'the plaintiff') filed a Civil Suit

against the applicant and his co-defendants for seeking a decree for possession of the suit property by way of specific performance of the agreement to sell dated 01.05.2006 or in the alternative, for the recovery of the amount of Rs. four(04) lac and all the defendants, including the applicant, were proceeded against *ex-parte* therein. Vide the above-said judgment and the decree, the Suit was decreed against the applicant and his co-applicant for the recovery of the sum of Rs.4 lac, along-with the interest thereon. Then, they filed the afore-referred application with the prayer to set aside the said judgment and decree and the same has been dismissed by the trial Court vide the order Annexure P-2 and the appeal, as preferred by the applicant against this order, has also been dismissed by the Appellate Court vide the judgment Annexure P-4.

3. I have heard learned counsel for the applicant-defendant No.4 in this revision petition, at the preliminary stage and have also perused the file carefully.

4. Learned counsel for the applicant has contended that the applicant came to know about the above-mentioned judgment and decree for the first time, on 08.10.2012 when the Bailiff came to his office for executing the warrant of attachment qua the suit property and immediately thereafter, he and his co-applicant moved the said application which bears the date 17.10.2012 but the same was filed in the trial Court on 24.07.2013 and hence, the said delay on the part of their counsel cannot be attributed to the applicant so as to deprive him from contesting the afore-said Civil Suit on merits but the trial Court and the Appellate Court have wrongly held

this application to be time barred. Secondly, he has contended that the applicant and his co-applicant were never duly served the summonses in the said Suit and rather, the plaintiff had procured the false reports from the concerned Process-Server qua the service of the same upon them and in these circumstances, the impugned order and the judgment are not legally sustainable and therefore, the same deserve to be set aside. To buttress his contentions, he has placed reliance upon **Radha Krishna Rai vs. Allahabad Bank and others, Civil Appeal No. 4683 of 1999, {Arising out of SLP (C) No.18341 of 1998} Decided on 23.08.1999 (SC); Chhabi Kulavi vs. Ganesh Chandra Mondal, Civil Appeal No.7371 of 2000 {Arising out of SLP (C) No.11224 of 2000} Decided on 14.12.2000 (SC); Ram Nath Sao @ Ram Nath Sahu vs. Gobardhan Sao, Civil Appeal No.1704 of 2002 {Arising out of SLP (C) No.6496 of 2001} Decided on 27.02.2002 (SC)** and **M/s Jersey Developers (P) Limited & Ors. Vs. Canara Bank, Civil Appeal No.2708 of 2022 Decided on 13.04.2022 (SC).**

5. However, the above-raised contentions are bereft of any merit because so far as the observations made by the Courts below regarding the afore-mentioned application being time barred, are concerned, it is worthwhile to mention here that as per the version of the applicant himself, he got the knowledge regarding the above-said *ex-parte* judgment and decree, for the first time, on 08.10.2012 but however, as mentioned in Para No.13 in the impugned judgment, the said application was filed on 24.07.2013, i.e about 9½ months thereafter. Though, learned counsel for the applicant has tried to explain the said delay before this Court by contending that the same

had occurred due to the lapse on the part of the counsel representing the applicant in the trial Court but it is again pertinent to point it out here that in the same Para in the judgment, the Appellate Court has specifically observed that the said delay had not been explained even during the course of the arguments in the appeal and that no application had been moved under Section 5 of the Limitation Act, for seeking the condonation thereof. It being so, it is quite explicit that the said application has rightly been held to be time barred. The observations made by Hon'ble Supreme Court in **Radha Krishna Rai (supra)**, **Chhabi Kulavi (supra)** and **Ram Nath Sao @ Ram Nath Sahu (supra)**, are not of much avail to the applicant because in all the afore-cited cases, the applications had been moved under Section 5 of the Limitation Act for seeking condonation of the delay, while explaining the reasons for the same whereas in the present case, no such application has been filed by the applicant, as mentioned above.

6. Further, even if for the sake of arguments, it is presumed that the above-said application had been filed within the prescribed period of limitation, even then the second contention regarding the trial Court having erroneously proceeded *ex-parte* against the applicant, does not hold much water because both the Courts below have categorically mentioned in the impugned order and judgment that while appearing as AW-1, the applicant had admitted that six more cases, as filed by the different parties, were also pending against him and he had received the summons in all those cases at the address as mentioned in the said Suit and that the addresses given by him in the application and as mentioned in the Suit are also the same and to

add to it, the Appellate Court has pointed out in Para No.14 in its judgment that while deposing as AW1, the applicant had mentioned the same address in his affidavit also. Further, the trial Court has observed in para No.10 in its order (Annexure P-2) that as per the report on the summons issued to the applicant, he had refused to receive the same and his co-applicant was also reported to have avoided the service of the summons issued to him and hence, the summonses were affixed on the doors of their houses and even thereafter, '*munadi*' was ordered and was duly effected, before passing the order to proceed *ex-parte* against them. In such circumstances, the said order cannot be construed to be erroneous at all. The observations made by Hon'ble Apex Court in **M/s Jersey Developers (P) Limited & Ors. (supra)** also do not help the applicant because in the afore-said case, the Directors of the Company had been staying in USA for the last 40 years and the summonses were sent at the address at Chennai and the same were returned unclaimed whereas in this case, the applicant was, admittedly, residing at the address as mentioned in the Suit, at the relevant time.

7. In view of the fore-going discussion, this Court is of the considered opinion that the impugned order and the judgment do not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

04th January, 2023.

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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes