

2024:PHHC:090882



(125) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3994-2024 (O&M)

DATE OF DECISION:-19.07.2024

Shimla Devi

...Petitioner.

Vs.

Sulekh Chand and others

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajinder Goel, Advocate for the petitioner.

HARKESH MANUJA, J. (Oral)

1. By way of present petition filed under Article 227 of the Constitution of India, prayer has been made for setting aside orders dated 18.09.2018 and 27.05.2024 passed by the Courts below, whereby, an application moved on behalf of the petitioner while invoking Order 9 Rule 13 CPC with the prayer for setting aside ex-parte order dated 22.01.2009 as well as ex-parte judgment and decree dated 21.02.2014 passed in favour of respondent-plaintiff No.1, stands declined.

2. In the present case, based on an agreement to sell dated 05.06.2003, respondent No.1-plaintiff filed a suit for possession by way of specific performance against the petitioner and the proforma respondents No.2 to 4/defendants (herein-after referred to as “defendants”). The suit was filed on 02.03.2007. The defendants put in appearance through counsel Sh. S.K. Dhanda, Advocate on 14.05.2007 but having failed to file any written statement, their defence was struck off on 14.08.2007. Thereafter, on 06.11.2008, counsel Sh. S.K.Danda, Advocate appeared before the trial

Court on behalf of the defendants, however, discontinued later, resultantly, the defendants were proceeded against ex-parte vide order dated 22.01.2009. Finally, ex-parte judgment and decree dated 21.02.2014 was passed in favour of plaintiff and against defendants. Soon thereafter on 28.04.2014, the petitioner being defendant No.4 moved an application under Order 9 Rule 13 CPC seeking setting aside of the ex-parte order dated 22.01.2009 as well as ex-parte judgment and decree dated 21.02.2014, *inter alia* stating therein that despite the fact that they having engaged lawyer and put in appearance before the trial Court, their counsel did not inform them about the proceedings being carried out in the suit and thus, the ex-parte judgment and decree was liable to be set aside.

3. Upon notice, respondent No.1 having filed reply to the said application, contested the same.

The trial Court vide order dated 18.09.2018, dismissed the application filed on behalf of the petitioner. Thereafter, the petitioner approached the Appellate Court, however, her appeal was also dismissed by the Court of District Judge, Yamuna Nagar, vide its order dated 27.05.2024.

4. Impugning the aforementioned two orders, learned counsel for the petitioner submits that the same are liable to be set aside as the application under Order 9 Rule 13 CPC was decided by the trial Court without even framing issues and granting any opportunity to the petitioner-defendant No.4 to lead evidence, so as to establish her case pleaded in the application.

Learned counsel further submits that the trial Court even overlooked the records while observing that the counsel appearing on behalf of petitioner-defendant No.4 even filed his “vakalatnama” before the trial

Court on 08.06.2007, whereas, the order sheets nowhere shows anything in

this regard. No other argument has been addressed.

5. I have heard learned counsel for the petitioner and gone through the paper book. I am unable to find substance in the submissions made on behalf of the petitioner.

6. In the present case, suit for possession by way of specific performance based on an agreement to sell dated 05.06.2003 was filed on behalf of respondent No.1-plaintiff wherein, having put in appearance before the Trial Court through their counsel, the defendants did not file any written statement, resulting into striking off their defence and later been proceeded against ex-parte vide order dated 22.01.2009, followed by ex-parte judgment and decree dated 21.02.2014 passed against them.

7. As per the averments made in the application, defendants appeared through their counsel Sh. S.K. Dhanda, Advocate, who neither apprised them of the latest proceedings being carried out before the trial Court nor even informed them about the passing of the ex-parte judgment and decree dated 21.02.2014.

In the humble opinion of this Court, the aforesaid reason does not appear to be plausible in the given facts and circumstances as the appearance on behalf of the defendants was made before the Trial Court in May 2007, whereas, the suit continued thereafter for another 07 years and it was decreed ex-parte on 21.02.2014. In the application, it has nowhere been mentioned that petitioner-defendant No.4 or any of her family members ever approached their counsel to inquire about the details or updates in the suit for long period of 07 years. The fact that an application for setting aside of the ex-parte judgment and decree dated 21.02.2014 came to be filed immediately on 28.04.2014, itself makes it plain and clear that the petitioner-defendant No.4 was fully aware and conscious of the proceedings

going on before the trial Court in the suit, yet, chose not to contest the same.

8. Furthermore, the averments made in the application about the knowledge been derived by petitioner-defendant No.4 of the ex-parte judgment and decree dated 21.02.2014 directly from the respondent No.1-plaintiff, who allegedly visited her house for taking possession of the property in question in terms of the ex-parte judgment and decree passed in his favour along with a copy thereof, does not appear to be genuine and reasonable in the circumstances, especially when the respondent No.1-plaintiff went on to litigate with petitioner-defendant No.4 for around 07 years having adopted the remedy as per law.

Moreover, the fact regarding appearance of petitioner-defendant No.4 before the trial Court through her counsel Sh.S.K. Dhanda, Advocate not being in dispute, no illegality can be found with the well thought of discretion exercised by the Courts below, wherein, an application filed on behalf of petitioner-defendant No.4 invoking Order 9 Rule 13 CPC was dealt with without framing issues as in the absence of any factual dispute, the framing of issues by the trial Court was neither essential nor prudent as the same would have unnecessarily delayed the proceedings.

9. In such circumstances, no interference is called for in the impugned orders passed by the Courts below. Resultantly, the present petition stands dismissed.

10. Pending application, if any, also stands disposed of.

19.07.2024
sonika

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No