



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

224**CR-5943-2023 (O&M)****Date of Decision : 22.05.2024**

GULZAR SINGH

.... Petitioner

VERSUS

ARJUN SINGH

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.S. Manaise, Advocate for the petitioner.

Mr. S.K. Choudhary, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 17.09.2018 passed by the learned Additional Civil Judge (Senior Division), Gurdaspur dismissing the application under Order IX Rule 13 CPC filed for setting aside the *ex parte* judgment and decree dated 15.10.2013 as also the order dated 13.09.2023 passed by the learned Additional District Judge, Gurdaspur dismissing the appeal preferred by the defendant-petitioner herein.

2. The brief facts relevant to the present *lis* are that a suit for specific performance was filed by the plaintiff-respondent qua an agreement to sell dated 26.04.2010. Vide order dated 20.08.2013 the defendant-petitioner was proceeded against *ex parte*. On 15.10.2013 an *ex parte* judgment and decree was passed by the Trial Court. On 21.12.2013 execution petition was preferred by the plaintiff-respondent. The defendant-petitioner put in appearance before the Executing Court on 23.05.2014. After



putting in appearance, on 13.02.2015 the defendant-petitioner was proceeded against *ex parte*. Subsequently the sale deed was executed through the agency of the Court and the execution was withdrawn. Second application for execution was filed seeking possession of the suit property on 16.03.2016. In the said petition appearance was caused by the defendant-petitioner on 19.07.2017. Certified copy of the judgment and decree dated 15.10.2013 was obtained by the defendant-petitioner on 24.10.2017 and the application under Order IX Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 15.10.2013 was filed on 23.01.2017. The Trial Court vide order dated 17.09.2018 dismissed the said application. Aggrieved by the same an appeal was preferred which was also dismissed vide order dated 13.09.2023. Hence, the present Revision petition.

3. Learned counsel for the defendant-petitioner would contend that though both the Courts had held that the defendant-petitioner was not served in the suit, however, the application under Order IX Rule 13 CPC has been dismissed only on the ground that the defendant-petitioner was appearing in the execution proceedings. It is further the contention of the learned counsel for the defendant-petitioner that once the defendant-petitioner was not duly served, the *ex parte* judgment and decree dated 15.10.2013 ought to have been set aside.

4. *Per contra*, learned counsel for the plaintiff-respondent would contend that the defendant-petitioner was well aware of the proceedings as



he appeared in the execution proceedings on 23.05.2014 for the first time yet the application for setting aside the *ex parte* judgment and decree dated 15.10.2013 was not filed till 23.01.2017 and hence the application has rightly been dismissed by both the Courts.

5. Heard.

6. In the present case the defendant-petitioner was proceeded against *ex parte* on 20.08.2013. *Ex parte* judgment and decree came to be passed on 15.10.2013. In the execution petition filed by the plaintiff-respondent, the defendant-petitioner put in appearance for the first time on 23.05.2014 and thereafter was proceeded against *ex parte* on 13.02.2015. The sale deed was executed through the agency of the Court and the execution was withdrawn. The second application for execution for seeking possession was filed on 16.03.2016 in which again the defendant-petitioner put in appearance on 19.07.2017. The present application was filed on 23.01.2017. Even if it is taken that the defendant-petitioner was not served, as has been observed by both the Courts, there is no explanation forthcoming as to why the application for setting aside the *ex parte* judgment and decree dated 15.10.2013 was not filed in May 2014 when the defendant-petitioner first appeared before the Executing Court. Infact, it has been observed by the Courts that in his cross-examination it has been admitted by the defendant-petitioner that he had appeared in the execution proceedings and that his counsel had sought time on 17.01.2015 for filing objections. There is



absolutely no reason or any plausible cause coming forth for not having filed the application from 23.05.2014 till 23.01.2017. In the absence of any explanation, no fault can be found with the orders passed by both the Courts. No other point has been raised.

7. In view of the above, the present petition, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

22.05.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No