



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

SAO No.29 of 2025 (O&M)

Date of Order:23.05.2025

Naresh @ Naresh Chander

.Appellant

Versus

Amita Dabas

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Vivek Suri, Advocate
for the appellant.**

ANIL KSHETARPAL, JUDGE (Oral)

1. The plaintiff assails the correctness of the First Appellate Court's order remitting the matter back to the trial court for fresh decision. On 30.11.2012, the plaintiff filed suit for specific performance, declaration with consequential relief of permanent injunction against the defendant- Amita Dabas wife of Surender Kumar Dabas, with respect to 1070 square yards plot comprised in khewat no.775.

2. The defendant on 25.03.2013, executed sale deed of plot measuring 486 square yards in favour of the wife of the plaintiff. Thereafter, she entered appearance in the suit on 10.12.2013, as her counsel Sh. Anil Dalal, Advocate, filed memo of appearance on her behalf. However, on 30.04.2014, her defence was struck off as she failed to file a written statement. It is not clear as to whether Anil Dabas, Advocate, ever filed power of attorney on behalf of the defendant or not, however, the court continued to mark presence of Anil Dabas, Advocate, for the defendant, who did not cross-examine the plaintiff's witnesses.

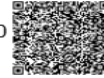


3. The trial court passed ex-parte decree on 23.01.2015. The First Appellate Court found that in the facts of the case, the defendant has not been granted proper opportunity to contest the case because the settlement between the parties is admitted by the plaintiff which resulted in sale deed in favour of the wife of the plaintiff on 25.03.2013 i.e. during the pendency of the suit. The First Appellate Court has observed as under:-

“12. On record, it remains that respondent/plaintiff had admitted in his examination-in-chief tendered through his affidavit Ex.PW1/A that a settlement happened between the parties during the course of litigation and in pursuance thereof, the applicant/appellant/defendant has also executed a sale deed of land measuring 486 sq. yards in favour of respondent/plaintiff's wife. On the careful perusal of the record of the learned Trial Court, it can be gathered that the suit for specific performance was filed on 30.11.2012. The applicant/appellant/defendant firstly appeared before the Court on 10.12.2013 through memo of appearance filed by her counsel Sh. Anil Dalal, Advocate. On 30.04.2014, the learned Trial Court ordered to struck off the defence of defendant as she failed to file written statement despite availing five opportunities. The case was fixed for recording plaintiff's evidence. The learned Trial Court kept mentioning the presence of Sh. Anil Dalal, Advocate purportedly representing the appellant/defendant in the order sheet but Sh. Anil Dalal, Advocate representing defendant has not actually participated at all in the proceedings of trial. As per the zimni order dated 23.08.2014, one PW Sushil Kumar was shown to remain present and examined. However, the record tells otherwise as on 23.08.2024, four witnesses including the plaintiff himself was present and



examined by the learned Trial Court. No opportunity to cross examine the witness has been afforded to Sh. Anil Dalal, Advocate purportedly representing the defendant before the Learned Trial Court. Even in the impugned judgment, it has never been mentioned that the learned counsel Sh. Anil Dalal, Advocate purportedly representing the applicant/appellant/defendant advanced a single argument at all. 13. In view of my discussion made from the perusal of the learned Trial Court, it is evident that though the attendance of Sh. Anil Dalal, Advocate purportedly representing applicant/appellant/defendant has been marked in the zimni orders of the learned Trial Court but he has not shown participated at any stage of the proceedings of the learned Trial Court. Entire proceedings has been conducted as appellant/defendant was proceeded against exparte before the Learned Trial Court. The law is well settled that striking off defence of defendant for his/her default in filing written statement cannot be construed that he/she cannot participate in the proceedings of the case or cannot cross-examine the plaintiff's witnesses. The only difference is that the defendant whose defence has been struck off cannot put suggestion to the plaintiff's witnesses in affirmative form to take plea of his/her case through those suggestion. The discussion of the proceedings happened on various dates before learned Trial Court has become important in view of fact that in pursuance of admitted compromise during the proceedings of the suit, a sale deed Ex.P8 bearing no.11304 dated 25.03.2013 was executed and registered whereby the applicant/appellant/defendant had transferred 486 sq. yards out of the total suit land in favour of wife of respondent/plaintiff. That the date i.e. 25.03.2013 of execution of sale deed Ex.P8 is relevant as thereafter, the applicant/appellant/defendant never virtually participated in the proceedings before the Learned Trial Court. This fact warrants a necessary inference that the applicant/appellant/defendant did not participate in the proceedings of the case under the impression that the matter has finally been settled between the parties and this inference further corroborate the stands of the applicant/appellant/defendant that he came know about the passing of the impugned judgment and decree only when she received summons of the execution of impugned decree. Therefore, there appears some merits in the



contentions and pleadings of the appellant/defendant that as per the compromise, the respondent/plaintiff was supposed to withdraw his suit and because of that impression/assurance, the applicant/appellant/defendant has not virtually participated in the proceedings of the case before the learned Trial Court and the impugned judgment and decree has been passed against her to her ignorance. It is also settled proposition of law that provision of Section 5 of the Limitation Act, 1963 shall not be construed and applied mechanically. It is not the intention of the legislature that the procedural law shall be construed and applied to create hurdle in administration of substantial justice. Though there is an inordinate delay in filing the present appeal, but no prejudice is going to cause to the respondent/plaintiff, if this court proceeds to hear the present appeal on merits rather shutting the door to the aggrieved of the applicant/ appellant/defendant on the technical ground that the appeal is time barred. Considering the aforesaid facts and circumstances and considering that it is always better to decide a lis on merits rather on technicalities, this court is of view that the present application for condonation of delay shall be allowed. Accordingly, the application in hand is hereby allowed. Delay in filing of the present civil appeal has been condoned. It is to be noted that nothing herein discussed shall have any bearing on the merits of the case.”

4. The learned counsel representing the appellant while referring to the order passed on 18.01.2019, submits that the defendant appeared in the execution petition and filed objections but the first appeal was filed only on 31.05.2019. He further submits that the defendant was represented by Sh. Anil Dalal, Advocate, hence the judgment and decree cannot be said to be ex-parte.

5. This court has considered the submissions of the learned counsel representing the appellant.

6. The First Appellate Court has thoroughly examined the matter. As already noticed, there was a settlement between the parties which



resulted in sale deed dated 25.03.2013, in favour of the wife of the plaintiff with respect to 486 square yard out of the suit land. It is the case of the defendant that the sale deed was executed as a full and final settlement between the parties. Thus, her absence from the court proceedings was not intentional. Moreover, strangely Sh. Anil Dalal, Advocate, kept appearing in the court without making any effort to watch her interest or defend her case.

7. The suit is with respect to immovable property. The First Appellate Court has only granted opportunity to the defendant to contest the case.

9. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

10. Dismissed.

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

(ANIL KSHETARPAL)
JUDGE

May 23, 2025

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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No