



In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6044 of 2019 (O&M)

**Reserved On: 31.01.2025
Pronounced On: 25.04.2025**

Satbir Gautam

... Petitioner(s)

Versus

Suresh Chander and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjeev Kaushik, Mr. Divanshu Kaushik,
Ms. Simran Sharma and Ms. Manreet Kaur, Advocates
for the petitioner(s).

Mr. Kulwinder Singh, Advocate
for the respondents.

Anil Kshetarpal, J.

I. Brief Facts

1. After having heard the learned counsel representing the parties, this Court is of the considered view that the petitioner is a victim of wrong legal advice which was compounded by an incorrect order passed by this Court in the previous round.

2. In this revision petition, the petitioner (defendant No.2 in a civil suit for recovery of ₹20,40,000/-) challenges the correctness of the First Appellate Court's order dismissing his application for condonation of the delay of 1749 days in filing the appeal against an *ex parte* judgment and decree dated 01.12.2012.

3. The relevant facts, in brief, are required to be noticed in order to

understand the controversy involved in the present case. Suresh Chander and Devinder Kumar filed a suit for recovery of ₹20,40,000/- (principal amount of ₹15,00,000/-) on the basis of an agreement to sell executed by Rajinder Singla son of Ram Parshad-respondent No.3 (defendant No.1). In fact, Pritam Kaur, Gurmail Singh, Daya Singh, Harmail Kaur, Ajaib Singh, Avtar Singh, Harnam Singh, Gurmail Kaur and Parminder Kaur, agreed to sell their landed property for ₹2,20,00,000/- in favour of Rajinder Singla, who, in turn, further entered into an agreement to sell in favour of respondents No.1 and 2 (plaintiffs) on 14.05.2003. The petitioner herein signed the aforesaid agreement to sell as a witness. Para 5 of the aforesaid agreement reads as under:-

“5. That in case any dispute arises between the 1st, 2nd and 3rd parties of this agreement, the same shall be resolved by sole arbitrator Satbir Gautam son of Shri Dhajja Ram Gautam, resident of Quila Zafargarh, Tehsil Julana, District Jind (Haryana) whose decision shall be final and binding on all these parties.

4. As is evident, the petitioner was not a party to the agreement to sell but was a marginal witness and named arbitrator. The plaintiffs filed a suit on 11.05.2006 for recovery of the amount alleging that the petitioner herein lured them to enter into an agreement to sell and on the assurance of the petitioner, he paid ₹15,00,000/- to defendant No.1-Rajinder Singla. The petitioner as well as Rajinder Singla were proceeded against *ex parte*. The petitioner was proceeded against *ex parte* on the basis of presumption that a registered notice sent to him should have been served upon him. The

petitioner claims that the aforesaid notice was returned with the report that he was not found residing at the given address. However, he was wrongly proceeded against *ex parte*. The petitioner filed an application on 17.07.2009 for setting aside the *ex parte* proceedings which was dismissed on 27.11.2009 which, in turn, was challenged by the petitioner in Civil Revision No. 811 of 2010 which was disposed of with the following order:-

“CM No.2999-CII of 2010

Application is allowed subject to all just exceptions.

CR No.811 of 2010

This is defendant's revision petition challenging the impugned order dated 27.11.2009 whereby his application to set aside the ex parte order 25.2 2008 has been dismissed.

An order passed under Order 9 Rule 13 CPC rejecting the application (in a case open to appeal) to set aside the ex parte-decree is appealable under Order 43 Rule 1(d) CPC.

Faced with this situation, learned counsel for the petitioner wishes to withdraw the present petition with liberty to the petitioner to seek an appropriate remedy available to him in accordance with law.

With the aforesaid liberty, this petition is ordered to be dismissed as withdrawn.”

5. Thereafter, the petitioner filed an appeal before the First Appellate Court which was dismissed as not maintainable on 07.12.2011. Instead of filing a review application in Civil Revision No. 811 of 2010, the petitioner filed Civil Revision No. 1372 of 2012 in this Court which was

disposed of with the following order:-

“On 25.2.2008, learned Additional Civil Judge (Senior Division), Rajpura ordered ex parte proceedings against the defendants and the case was, thereafter, adjourned for ex parte evidence of the plaintiffs. The petitioner, who is one of the defendants, then filed an application (Annexure P-4), presumably under Order IX Rule 7 CPC, for setting aside the order proceeding ex parte against him. The said application was dismissed by the trial Court on 27.11.2009. Aggrieved of the same, the petitioner filed CR 811 of 2010 in this Court which came up for hearing before a co-ordinate Bench on 8.2.2010. The Bench hearing the revision observed that the order under Order IX Rule 13 CPC rejecting the application to set-aside the ex parte order was appealable under Order XLIII Rule 1(d) CPC. Faced with the observations made by the Bench, the counsel for the petitioner prayed for withdrawing the revision with liberty to seek appropriate remedy available to him in accordance with law. The revision was, accordingly, dismissed as withdrawn with liberty, as sought for by the petitioner. The petitioner then filed an appeal which was taken up by learned Additional District Judge, Patiala. After hearing counsel for the petitioner as well as present respondents No.1 and 2-plaintiffs, the lower appellate Court, vide impugned order dated 7.12.2011 (Annexure P-6), held that the appeal was not maintainable as the order dated 27.11.2009 had been

passed on an application filed by the petitioner under Order IX Rule 7 CPC. He then filed the present revision in which notice of motion stands issued and pursuant to the same, contesting respondents No.1 and 2 have put in appearance.

As the order dated 27.11.2009 was passed on an application under Order IX Rule 7 CPC, the petitioner had rightly filed CR 811 of 2010. However, for reasons best known to him, he preferred to withdraw the revision and then filed an appeal, which has now been dismissed by the lower appellate Court as being not maintainable.

After hearing learned counsel for the parties, the Court is of the view that the only remedy available to the petitioner, under the given circumstances, is to file an application for review of the order dated 8.2.2010 passed in CR 811 of 2010 so as to pursue his remedy of revision against the order dated 27.11.2009.

The present revision is, accordingly, disposed of with liberty to the petitioner to file appropriate application for seeking review of order dated 8.2.2010 passed in CR 811 of 2010. For a period of one month from today, the trial Court shall not pass the final order.”

II. Analysis and Discussion

6. It is evident that the petitioner was relegated to the remedy of filing a review application in Civil Revision No. 811 of 2010. As is evident that this Court directed the Trial Court not to pass a final judgment, however,

the judgment was passed on 01.12.2012. As advised, the petitioner filed a Civil Original Contempt Petition No. 733 of 2013 in which the comments of the learned Presiding Officer were sought. Ultimately, the contempt petition was dismissed on 19.01.2015. Thereafter, the petitioner was advised to file an appeal against the *ex parte* judgment and decree which was filed on 18.09.2017 along with an application for condonation of delay of 1749 days which has been dismissed on 17.08.2019.

7. The First Appellate Court has dismissed the application on the ground that each and every day's delay has not been explained and the matter relates to the year 2006 and the petitioner intends to prolong it further.

8. It is evident from the above-mentioned facts that the petitioner is a victim of wrong incorrect legal advise. He filed Civil Revision No. 811 of 2010, Civil Revision No. 1372 of 2012 and Civil Original Contempt Petition No. 733 of 2013 through a common counsel. In fact, on 08.02.2010, this Court has failed to distinguish between an order passed under Order IX Rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") and an order passed under Order IX Rule 13 CPC. No appeal was maintainable against an order passed on an application under Order IX Rule 7 CPC. However, this Court has wrongly observed that the appeal is maintainable. The learned counsel also did not cross-check the aforesaid fact but promptly withdrew the revision petition. Thereafter, once again, on 21.11.2012 the petitioner was given liberty to file an application for review which was also not filed. He was suggested to file a contempt petition which again remained pending for two years.

9. Moreover, the petitioner claims that no decree against him could be passed for recovery of the amount as he was not a party to the aforesaid agreement. This Court is not going into the aforesaid facts because it is not a subject matter of issue in this revision petition. However, *prima facie* the petitioner's contentions appear to have merits.

10. This Court has also examined the *ex parte* judgment passed by the Trial Court on 01.12.2012 which has been decided due to lack of opposition from the defendants. In these circumstances, the petitioner has to be given an opportunity to contest the correctness of the judgment before the First Appellate Court which has taken a myopic view of the matter.

11. From the facts narrated above, it is evident that the petitioner is a victim of the incorrect advice. Hence, it is considered appropriate to grant an opportunity to the petitioner to pursue his appeal on merits.

III. Decision

12. Accordingly, the present revision petition is allowed and the impugned order passed by the First Appellate Court on 17.08.2019 is set aside while directing it to decide the first appeal on merits. The delay of 1749 days in filing the first appeal shall stand condoned.

13. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 25, 2025
"DK"

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