



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

295

CR-2438-2024

Date of Decision.:13.05.2025

Tarsem Chand

.....Petitioner

Vs.

Gurmel Singh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Ramandeep Kaur, Advocate for
Mr. Vikram Singh, Advocate for
the petitioner.

DEEPAK GUPTA, J. (ORAL)

This revision is directed against order dated 24.01.2024 (Annexure P-8) passed by learned Additional District Judge, Patiala, dismissing the appeal against order dated 01.02.2019 (Annexure P-6) passed by learned Civil Judge (Junior Division), Rajpura, whereby an application under Order IX Rule 13 CPC was dismissed.

2. As is borne out from the paper-book, suit for specific performance of agreement to sell dated 06.01.2003 for decree for mandatory and permanent injunction was filed by Gurmel Singh (*respondent herein*) against defendant Tarsem Chand (*petitioner herein*). Defendant contested the suit by filing written statement. Necessary issues were framed. However, during proceedings, defendant was proceeded ex parte and ultimately, the suit was decreed ex parte on 30.10.2013, copy of which is Annexure P-3.

3. The defendant i.e. petitioner herein moved an application under Order IX Rule 13 CPC for setting aside the ex parte judgment and decree dated 30.10.2013, which was opposed by the respondent- plaintiff.

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Necessary issues were framed and after taking evidence, the application was dismissed by way of order dated 01.02.2019 by learned Civil Judge (Junior Division), Rajpura, copy of which is Annexure P-6 and the said order was affirmed by the Appellate Court by way of the order dated 24.01.2024 (Annexure P-8), which has now been assailed before this Court.

4. It is contended by learned counsel that he came to know about the ex parte judgment and decree against him in the first week of June, 2014, when one Mukand Singh submitted an application to the police against him to the effect that the pendency of the suit had not been disclosed to him at the time of purchasing the land. After conclusion of the proceedings of enquiry, defendant checked up the police record, obtained certified copy of the judgment and decree and then moved the application after gaining knowledge about the date of the decree. Learned counsel contends further that in fact, fraud has been committed with the defendant- petitioner by Gurmel Singh- respondent in connivance with Mukand Singh because during pendency of the suit, said Mukand Singh had approached the petitioner as a prospective buyer and had undertaken to take care of the litigation. However, later on said Mukand Singh did not take care of the litigation, as he connived with the plaintiff, who was his nephew.

5. After hearing learned counsel for the petitioner at considerable length and going through the orders passed by the Courts below, this Court does not find any merit in the revision. As the orders would reveal, defendant was contesting the suit and had even filed the written statement. Defendant did not appear before the Court on 16.05.2013, due to which he was proceeded *ex parte* and ultimately, the suit was decreed ex parte on 30.10.2013. Simply because defendant had sold or had agreed to sell the property in dispute to some Mukand Singh, who had asked the petitioner- defendant to take care of the litigation, cannot be a sufficient

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justification for the defendant for not attending the Court proceedings.

6. Not only this, the defendant was duly served in the suit and he had even filed the written statement and so, he cannot be allowed to plead that he was not aware of the ex parte judgment and decree dated 30.10.2013 prior to the first week of June, 2014. The limitation for moving the application for setting aside the ex parte judgment & decree under Order IX Rule 13 CPC is to commence from the date of the ex parte judgment and decree in these facts & circumstances, and not from the date of the alleged knowledge, inasmuch as defendant- petitioner had been duly served. As such, the application filed on 25.07.2014 for setting aside the ex parte judgment and decree dated 30.10.2013 has been rightly held by the Courts below to be barred by limitation.

7. This Court does not find any illegality or perversity in the impugned orders as passed by the Courts below and as such, holding the present revision to be devoid of any merit, same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

May 13, 2025

Neetika Tuteja

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable | Yes/No |