

(2002) 04 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3220 of 2001

Punjab Urban Planning and
Development Authority

APPELLANT

Vs

Joginder Singh

RESPONDENT

Date of Decision: April 22, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13, 151

Citation: (2002) 4 RCR(Civil) 182

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: Sanjeev Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This is a revision petition filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity the Code) is directed against the order dated 22.3.2001 passed by the Additional District Judge, Patiala dismissing the appeal of the defendant-petitioner against order dated 7.9.1999 dismissing an application filed under order IX, rule 13 of the Code passed by the Civil Judge (Junior Divisional), Patiala. In the order dated 7.9.1999, the Civil Judge had refused to set aside the exparte decree dated 30.4.1997.

2. Brief facts of the case unfolded in this revision petition are that the plaintiff-respondent filed a suit No. 67-T of 10.3.95 seeking declaration that the letter dated 9.2.1994 issued by the defendant-petitioner cancelling the allotment of plot No. 534 mentioned in the above para was illegal, null and void. Plot No. 534 was auctioned and the plaintiff-respondent being the highest bidder was allotted the plot on 15.6.1985 after he deposited the bid amount of Rs. 3241.50 paise. Vide letter dated 27.2.1992, the plaintiff respondent was asked by the defendant-petitioner to

pay a sum of Rs. 31,790/- (Rs. 6,979/- on account of balance price of the plot and an amount of Rs. 24,607/- on account of over due amount of instalments). The whole amount of Rs. 31,790/- was paid by the plaintiff respondent to the Estate Officer, Urban Estate, Chandigarh vide demand draft dated 5.3.1992 drawn on State Bank of Patiala, Service Branch, Chandigarh. It was in these circumstances that on 22.3.1994, the defendant-petitioner cancelled the allotment of plot No. 534 forfeiting the amount of Rs. 3241.50 paise and directed the refund of balance amount of Rs. 29,173.50 paise without grant of any hearing to the plaintiff-respondent. The suit was decreed on 30.4.1997 against the defendant-petitioner and an exparte decree was passed. Therefore, the defendant-petitioner filed an application under Order IX rule 13 of the Code for setting aside exparte judgment and decree dated 30.4.1997 passed by the Civil Judge (Junior Division), Patiala. After issuing notice of the application and receipt of written statement filed by the plaintiff respondent the Civil Judge framed 5 issues which are as under:

1. Whether there are sufficient grounds to set aside the exparte decree dated 30.4.1997? OPP
2. Whether the application is within time? OPA
3. Whether the application is not maintainable? OPR
4. Whether the application has not been signed and verified in accordance with law? OPR
5. Relief.

3. Findings recorded on issue No. 1 clearly establish that the defendant-petitioner was quite negligent in defending his case and the same reads as under:

"The proceedings on various dates reproduced above, go to show that defendants have been quite negligent in defending the case at various stages. Even if it is assumed that date 25.9.95 was not within the knowledge of counsel for applicant, vide which defendants had been proceeded against exparte, there is no explanation as to why no appearance was put on behalf of applicant on 12.6.96 when he was again proceeded against exparte. The plea now taken that on 12.6.96, file was not traceable, appears to be an excuse, now coined to cover negligence on the part of applicant or the counsel. There is nothing on file to show that any application was moved by defendants that file be traced. Even after 12.6.96, case remained pending for about 10-1/2 months before its final disposal. No effort admittedly was made to get exparte proceedings set aside after 12.6.96. The plea that case was transferred to another court without notice to defendants is against a plea with no legs to stand upon. Defendants were already exparte and as such no notice was required to be given to them regarding transfer of case. If applicant had taken a little care and made enquiry from concerned quarters, he could easily come to know about transfer of case and put in appearance to show that defendants from the very

beginning had no intention of contesting the suit.

A contention has been raised on behalf of applicant that a party should not be made to suffer for the negligence of his counsel. This contention is also without any merit. A party which remains silent for over two years without caring to know about the fate of case, cannot be allowed to raise plea that he not penalised for negligence of his counsel.

All these circumstances point out to only one conclusion that no ground is made out to interfere with the proceedings leading to passing of *ex parte* decree. It is therefore held that no sufficient cause is made out to set aside the *ex parte* decree. This issue is accordingly decided against the applicant."

4. On issue No. 2, the Civil Judge held that application under Order IX rule 13 was filed beyond the period of limitation prescribed and thus, the same was barred. Other issues are insignificant to deal with.

5. The order passed by the Civil Judge on 7.9.1999 was challenged in appeal before the Additional District Judge, Patiala who also agreed with his findings on issues No. 1 and 2. Feeling aggrieved by the rejection of his appeal, defendant-petitioner has filed the present revision petition. Before advertng to the arguments raised by the learned counsel for the defendant-petitioner it would be apposite to refer to the findings given by the Civil Judge in judgment and decree dated 30.4.1997 which reads as under:

"From the evidence on the file it is clear that plot in dispute was allotted to the plaintiff and a sum of Rs. 3241.50 P was deposited by him. Thereafter letter dated 27.2.92 Ex.P2 thereby calling upon the plaintiff to deposit Rs. 31,790/- within a week from receipt of letter was issued to him and accordingly amount was deposited by the plaintiff vide demand draft dated 5.3.1992. Thereafter the defendants have passed order Ex.P4 cancelling the allotment of the plaintiff and it has further been ordered that the amount of Rs. 29173.50 P be refunded to him. From the perusal of Ex.P4 it appears that the allotment has been cancelled because the plaintiff failed to deposit the balance of 25% within a period of 30 days from the date of issuance of allotment letter. However the cancellation of allotment on this ground is illegal as the defendants themselves wrote a letter dated 27.2.1992 calling upon the plaintiff to deposit the balance amount which was deposited by him in accordance with the letter. The amount was received by the defendants and this fact is evident from the perusal of Ex.P4 as vide this order they have ordered to refund the amount of Rs. 29173.50 P to the plaintiff. After having accepted the amount from the plaintiff as per their own letter, the defendants had no right to cancel the allotment of the plot particularly when nothing was due against the plaintiff. Moreover, the plaintiff was not afforded any opportunity of hearing before passing the cancellation order, therefore, the said order is illegal, null and void and plaintiff is entitled to get possession of the plot in dispute. Accordingly, I pass a declaratory decree to the

effect that letter dated 2.9.94 bearing No. A-4(P) No. 534/2-94/3287 dated 22.3.94 cancelling the allotment of plot No. 534 from the name of the plaintiff is illegal, null and void and the defendants are directed to deliver the possession of the plot to the plaintiff in accordance with the letter and they are restrained from auctioning the plot in the name of any person. No order as to costs. Decree sheet be prepared. File be consigned to the record room."

6. Shri Sanjiv Sharma has apprised this Court that execution proceedings have been instituted and the same are pending for today before the executing Courts.

7. I have heard Shri Sanjeev Sharma, learned counsel for the defendant-petitioner who has produced the original file before me and have also gone through the record with his assistance. Shri Sharma has argued that the trial court instead of passing an ex-parte decree without affording an opportunity of hearing to the defendant-petitioner should have granted opportunity and the judgment and decree dated 30.4.1997 should not have been passed. He has further argued that the order dated 7.9.1999 dismissing the application under Order IX rule 13 passed by the Civil Judge (Junior Division) Patiala and as affirmed by the Additional District Judge on 22.3.2001 also suffer from the same legal infirmity. To the Court's query as to whether any useful purpose would be served by setting aside the judgment and decree dated 30.4.1997 no satisfactory answer could be given because total amount of price of the plot has been deposited by the plaintiff-respondent. The delay in depositing the price of the plot which appears to have led to cancellation by issuing letter dated 9.2.1994.

8. I have thoughtfully considered the submissions made by the learned counsel and do not feel impressed to accept the same because it would be futile exercise to set aside the exparte judgment and decree dated 30.4.1997 because the whole amount of the plot has been deposited by the plaintiff-respondent vide demand draft dated 5.3.1992. The basic reason for cancellation of allotment of plot as recorded by the Civil Judge appears to be failure of the plaintiff-respondent to deposit 25% of the amount within a period of 30 days from the date of issuing the allotment letter which was issued on 15.6.1985. The cancellation on this ground has been held illegal because the plaintiff-respondent deposited the amount of Rs. 31,790/- vide demand draft dated 5.3.1992 in response to the letter written by the defendant-petitioner on 27.7.1992 asking him to deposit the afore-mentioned amount. No malafide has been alleged by the defendant petitioner against the plaintiff-respondent. Moreover, it has been held that no opportunity of baring was afforded before issuing letter of cancellation. Although, application under Order IX rule 13 would ordinarily be entertained and liberally allowed but in the facts and circumstances of this case it is not possible to follow this course because it would cause serious prejudice to the rights of the plaintiff-respondent as decree dated 30.4.1997 pending for execution and the date fixed was 22.4.2002. Only possession remains to be delivered. Moreover, no useful purpose would be served as the whole amount due stands

deposited as early as 5.3.1992. Therefore, I am not inclined to exercise revisional jurisdiction u/s 115 of the Code as there is no material irregularity or illegality in the orders dated 7.9.1999 and 22.3.2001 passed by both the Courts below dismissing the application under Order [X Rule 13 of the Code. Therefore, the revision petition is liable to be dismissed.

9. For the reasons recorded above, this revision petition fails and is dismissed.