

(2013) 07 P&H CK 0563

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 2769 of 2013 (O and M)

Sawan Mal Arora

APPELLANT

Vs

Ram Kishan Bajaj

RESPONDENT

Date of Decision: July 30, 2013

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Rajesh Garg, for the Appellant; Ashwani Talwar, for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.

CM No. 16049 CII of 2013

1. CM is allowed. Annexures R-1 to R-3 are taken on record.

CR No. 2769 of 2013

The revision is against an order of delivery of possession passed pursuant to the decree for specific performance of the agreement of sale, when an application for setting aside the decree was still pending. Counsel for the petitioner points out to me that there is an inherent defect in the order passed by the court directing delivery. I have gone through the order of the executing court and find the same to be really clumsy. She has directed delivery of the property to be effected on 27.4.2013, which was purported to be an order issued on 20.3.2013. She has subsequently modified the order to have been effected on 18.3.2013 because that was the day when the case was posted for hearing. There could not have been obviously an order passed on 20.3.2013 when the case was not posted for hearing at all. There are also some white ink pasted against the date of posting. Evidently, there has been some clumsy work and the order makes it appear that the steno was responsible for causing an error in the date of issue of order. Counsel appearing for the petitioner further points out to these fallibilities and states that even apart from

the defect in the order when an application for setting aside ex-parte was pending, direction for delivery of property ought not to have been ordered for it would render inefficacious the conduct of the suit. If her own application for setting aside the decree is allowed, the order directing execution of the decree would become ineffective.

2. Though at first blush, I was of the view that the petitioner ought to be protected, however, on going through his conduct in the proceedings, I would find that he has literally disentitled himself to any discretionary orders. The decree in execution is an agreement for specific performance of the agreement of sale of the land and the building. The petitioner had appeared through his counsel and has subsequently remained ex-parte. There was not but reasons, since he had sold the very same property, which was pending in suit to yet another person, namely Kanta Bhatia. Kanta Bhatia has filed a suit for a declaration that the decree obtained by the respondent decree-holder was collusive and cited the petitioner as well as the decree-holder as defendants. When her own suit was pending, the decree-holder had already filed an execution petition for execution of the decree. Notice in execution had been received by the petitioner. He did not raise any objection immediately but Kanta Bhatia filed as third party objections seeking for stay of execution till the final conclusion of her own suit. Her petition was dismissed and in the revision filed before the court by her in Civil Revision No. 1437 of 2011, the court was prima facie of the view that Kanta Bhatia was a purchaser pendente lite and the vendor who had sold the property must be called in the court for answering the circumstances of bringing about a sale when there was already a suit for specific performance against him. He made himself scare from the proceedings and in final dispensation in the order passed by this Court on 16.8.2012, the obstruction sought at the instance of Kanta Bhatia was dismissed with costs of Rs. 50,000/- imposed against her. Only after the order was passed on 16.8.2012, the petitioner has filed this application for setting aside the ex-parte proceedings. An objection, which was not taken immediately on being served and an attempt not made till when the execution process was still going, but filing a petition for setting aside the decree at quite a belated stage after the dismissal of civil revision petition by Kanta Bhatia and stay of warrant issued in the execution stage applying for do not show one bit any bonafide in the action of the petitioner. At least, prima facie if there is a subsequent purchaser, such as Kanta Bhatia it ought to be more in her interest to protect her possession. If her possession was not protected through an order passed by this Court in Civil Revision aforesaid, the petitioner also cannot be provided such benefit. All these observations are for the purpose of the revision and they shall not be used in the application filed by him for setting aside the decree. The petition deserves to be dismissed and accordingly dismissed with costs of Rs. 5,000/-.