

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 1080 of 2015 (O&M)
Date of Decision: 17.07.2015.**

Onkar Singh

.....Petitioner

Versus

Lakhwinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Ashok Bector, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the orders dated 9.4.2013 and 20.12.2014.

Learned counsel for the petitioner has submitted that the counsel for the petitioner had pleaded no instructions on behalf of the petitioner on 16.2.2008. Hence, the Trial Court was required to issue notice to the petitioner before initiating *ex parte* proceedings against him. Learned counsel has further submitted that the petitioner could not appear before the Trial Court as his son had met with an accident.

In the present case, respondent had filed suit for specific performance of agreement to sell against the petitioner. Petitioner appeared before the Trial Court but on 16.2.2008, counsel for the petitioner pleaded no instructions. The Trial Court

left with no other alternative ordered that the petitioner be proceeded *ex parte*. *Ex parte* proceedings against the petitioner were initiated on 16.2.2008 and *ex parte* judgment and decree were passed against the petitioner on 13.3.2008. However, the petitioner moved an application for setting aside the *ex parte* judgment and decree passed against him on 26.3.2011. The plea taken by the petitioner that he could not appear before the Trial Court as his son had met with an accident was not established by him. Rather, it transpired on the basis of the evidence led by the petitioner that his son was admitted for treatment on 28.5.2008. Petitioner could not disclose the month and year of the accident. Thus, the petitioner had not appeared before the Trial Court in February 2008 whereas his son was admitted for treatment in the hospital on 28.5.2008. It is not a case where the petitioner did not know about the institution of the suit against him. Petitioner had initially appeared before the Trial Court but had later failed to pursue the case. After three years of the passing of the *ex parte* judgment against him, petitioner moved the application for setting aside *ex parte* proceedings against him. It has further been noticed by the Trial Court that AW-1 Tarlok Singh had admitted in his cross-examination that the *ex parte* decree had been duly executed. After execution of the sale deed, a compromise was effected with the plaintiff. The said compromise was effected in the year 2008. Thus, the petitioner was aware of the *ex parte* decree as the same had been executed in the year 2008 and possession of the property had been delivered vide *rapat roznamcha* Exhibit R-1.

In the facts and circumstances of the present case, there is no force in the argument raised by learned counsel for the

petitioner. Petitioner had failed to establish sufficient cause for setting aside ex parte proceedings against him.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

July 17, 2015
Gurpreet