

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 1870 of 2015
Date of Decision: 17.3.2015.**

Kedar Singh and another

.....Petitioners

Versus

Raj Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. J.S.Saneta, Advocate
for the petitioners.

SABINA, J.

Petitioners have filed this petition under Article 227 of Constitution of India challenging the order dated 24.7.2014 (Annexure P-4) whereby they were proceeded *ex parte*, order dated 30.8.2014 (Annexure P-6) whereby application moved by the petitioners for setting aside *ex parte* proceedings against them, was dismissed and order dated 2.1.2015 (Annexure P-8) whereby warrant of attachment, has been issued by the Executing Court.

I have heard the learned counsel for the petitioners and have gone through the record available on the file carefully.

Respondent filed suit for permanent injunction against the petitioners. The said suit was decreed by the Trial Court vide judgment/decreed dated 3.1.2008 (Annexure P-1) and it was held as under:-

"It is ordered that the suit filed by the plaintiff is hereby decreed to the effect that defendants are directed to leave

as much of distance as to the depth undertaken by him in measurement of feet as a lateral support from the land of the defendants, adjacent to the land of the plaintiffs. No order as to costs.”

Thereafter, as the decree was not enforced by the petitioners, respondent moved an application under Order 21 Rule 32 of the Code of Civil Procedure, 1980 seeking enforcement of the decree dated 3.1.2008. Petitioners initially appeared before the Executing Court but on 24.7.2014, none had appeared on behalf of the petitioners and the Executing Court vide order dated 24.7.2014 (Annexure P-4) ordered that the petitioners be proceeded *ex parte*. Local Commissioner was appointed and was directed to visit the spot and submit its report.

Thereafter, petitioners moved an application for setting aside the *ex parte* proceedings against them. The said application was dismissed by the Executing Court vide order dated 30.8.2014 (Annexure P-6) on the ground that the petitioners had earlier been proceeded *ex parte* on 12.9.2011 and 17.5.2013. Therefore, the Executing Court rightly came to the conclusion that the petitioners were in the habit of not appearing before the Executing Court. Apparently, the petitioners only wanted to delay the execution proceedings by not appearing before the Executing Court and thereafter by challenging the *ex parte* proceedings against them.

The Executing Court basing reliance on the report of the Local Commissioner, ordered that the warrant of attachment qua the property of the petitioners be issued as they had failed to enforce the decree dated 3.1.2008. Since the petitioners had failed to enforce the decree dated 3.1.2008, the Executing Court had

rightly ordered the issuance of warrant of attachment qua the property of the petitioners.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

**March 17, 2015
Gurpreet**