

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.318 of 2015
Date of Decision: 16.01.2015

Sukhminder Pal Singh Grewal

. . . .Petitioner

Versus

Manohar Lal and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vivek Goyal, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed by defendant No.1. In a suit for specific performance, filed on the basis of an agreement dated 23.4.2005, the petitioner was proceeded against *ex parte* on 17.4.2007 and his application filed on 1.12.2014 for setting aside the proceedings and allowing him to join the proceedings to defend the suit has been dismissed by the impugned order and hence, the present revision petition.

Learned counsel for the petitioner has argued that since his advocate had pleaded no instruction therefore, it was incumbent upon the Court to issue notice to him.

I have heard learned counsel for the petitioner and after examining the record, am of the considered opinion that there is no merit in his submission because the petitioner has admitted the agreement with the plaintiff but sold the suit property to defendant No.2, who happened to be his co-brother (saddu). Both defendants

No.1 and 2 had engaged the same counsel in the trial Court. Allegedly, the counsel appearing on his behalf pleaded no instructions on 17.4.2007 and thus he was proceeded against *ex parte*, at the stage when he had not even filed the written statement and the defendant No.2 had continued with the suit on the ground of *bona fide* purchaser. When the suit was at the stage of rebuttal and arguments, the present application was filed and the trial Court has dismissed the application by imposing the cost as well. There is no dispute that in case where the counsel pleads no instructions, the Court should generally issue notice to the party concerned so that it may make an alternate arrangement but every case has to be decided on its own facts and in the present case the act and conduct of the petitioner is such which does not entitle him to appear in this case w.e.f. 17.4.2007 when his advocate had pleaded no instructions because he belongs to the same city and his co-brother is defending the suit since beginning, therefore, it cannot be believed that the petitioner was not aware of the proceedings in the trial Court against him in the suit and has now surfaced at the fag end with this application so that the entire proceedings, which have been carried out by the trial Court during the past seven years, may be set aside and the petitioner may start the trial *de novo* though he himself is at fault for not pursuing his litigation religiously and diligently.

Thus, I find no merit in this petition. However, it is prayed that the petitioner may be allowed to join the proceedings, at this stage of rebuttal and arguments and that he would not lead any evidence and file written statement.

Accordingly, the present revision petition is hereby disposed of with liberty to the petitioner to join the proceedings now w.e.f. the next date of hearing i.e. 17.1.2015 without having the liberty to file any written statement or leading evidence in suit.

16.01.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE