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

CR No.3964 of 2015 (O&M)

Date of decision: July 20, 2015

Bhulla Singh

.....Petitioner

Versus

Balwinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.S. Joshi, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 18.05.2015, whereby, application moved by the petitioner under Order 9 Rule 13 of Code of Civil Procedure, 1908 ('CPC' for short), was dismissed.

Learned counsel for the petitioner has submitted that the petitioner was not informed by his counsel qua *ex parte* proceedings against him. Due to this reason, petitioner could not pursue his case before the trial Court.

Respondent had filed suit for possession by way of specific performance of agreement to sell dated 16.06.2005. Petitioner appeared before the trial Court and filed his written statement. Vide order dated 15.03.2011, petitioner was proceeded *ex parte* as his counsel had suffered a statement that he had no instructions to appear on behalf of the petitioner. Thereafter, on 23.05.2012, another counsel appeared on behalf of the petitioner and moved an application for setting aside the *ex parte* proceedings against him. The said application was allowed subject to payment of costs. However, petitioner did not deposit the costs and was

consequently again proceeded *ex parte*. Trial Court passed *ex parte* decree in favour of the respondent on 19.09.2012. Petitioner filed an appeal against the said judgment/decreed and the same was dismissed by the First Appellate Court on 02.04.2014. Thereafter, application under Order 9 Rule 13 CPC was filed by the petitioner on 04.04.2015. The learned trial court while dismissing the application moved by the petitioner under Order 9 Rule 13 CPC rightly held that the delay in filing the application remained unexplained. In fact, petitioner was initially proceeded *ex parte* before the trial Court and the said proceedings were set aside subject to payment of costs. Petitioner failed to pay the costs. Thereafter, petitioner filed appeal against the *ex parte* decree dated 19.09.2012 and the same was dismissed on 02.04.2014. The application under Order 9 Rule 13 CPC was filed on 04.04.2015, i.e. after one year of the dismissal of the appeal. Hence, in the facts and circumstances of the present case, it cannot be said that the petitioner was not aware of the pendency of the proceedings pending against him. Rather, despite knowledge of the proceedings pending against him, petitioner has not pursued the case.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

July 20, 2015
mahavir