

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.471 of 2015

Date of Decision:-23.01.2015

Anil S. Rao.

.....Petitioner.

Versus

Ram Chander Singh & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. P.R. Yadav, Advocate for the Petitioner.

JASWANT SINGH, J.(ORAL)

Plaintiff is in revision aggrieved against the order dated 12.12.2014 (P-3) passed by the learned Civil Judge(Jr. Divn.), Pataudi, whereby application filed by defendant nos.1 to 3/respondents for setting aside the ex-parte order dated 2.7.2014 has been allowed.

Learned Counsel for the petitioner has argued that the learned lower Court has although observed that there is no justification on behalf of the defendants/respondents as to why they had not appeared in the case, still the Court below has set aside the order dated 2.7.2014 whereby they were proceeded ex-parte, only in the interest of justice. Thus it was argued that the learned Court below was not justified in passing the impugned order as no sufficient cause was shown by the defendants for non appearance on 2.7.2014.

After hearing learned Counsel for the petitioner and perusing the paper book, this Court is of the considered view the present petition is devoid of any merit and same deserves to be dismissed.

No doubt the learned Counsel for the plaintiff has correctly argued that there is no justification as to why the defendants/respondents had not caused appearance on 2.7.2014, However, at the same time the learned Court below has rightly held that the present suit is for declaration and permanent injunction filed amongst the family members involving the question of title. Since the dispute is amongst the family members and the bone of contention amongst the parties would remain until and unless the matter is finally adjudicated amongst them, This Court is also of the opinion that the learned trial Court had rightly set aside the order dated 2.7.2014 whereby the defendants were proceeded ex-parte. In CR No.562 of 2015 this Court has already held the circumstances under which the Court can interfere while orders of present nature are passed. It is reiterated for the sake of convenience that in the proceedings of this nature, the Courts must see as to what is the nature of the suit and as to whether it would be in the interest of justice that the order whereby the defendant has been proceeded ex-parte would cause serious prejudice to the rights claimed by them. The Court must not close its eyes towards the nature of the suit and has to see the facts and circumstances arisen in the case while considering the application for setting aside the ex-parte order. In the present case learned trial Court has correctly applied the aforementioned principles and come to a conclusion that since substantive rights are involved which cannot be brushed aside on technicalities. Thus, an opportunity of fair trial must be granted to the respondents/defendants.

In view of the above, finding no merit in the present revision petition, the same is hereby dismissed.

**(JASWANT SINGH)
JUDGE**

January 23, 2015
Vinay