

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

(229)

**CR No.5714 of 2014 (O&M)
Decided on: July 20, 2015.**

Jagtar Singh

.... Petitioner

Versus

Jaswinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. O.P. Kamboj, Advocate,
for the petitioner.

Mr. Amit Jaiswal, Advocate,
for respondent No.1.

Mr. Manu Loona, Advocate,
for respondents No. 8, 9, 10, 11 and 16.

Mr. Rajnish K. Jindal, Advocate,
for respondents No. 18 and 21.

M.M.S. BEDI, J (ORAL)

The plaintiff-respondent No.1 has filed a suit for possession by way of specific performance of agreement to sell dated 11.03.2006 executed by defendants No. 1 to 3 in their personal capacity and on behalf of defendants No.4 to 15 who had agreed to sell the land measuring 337 kanals 2 marlas.

The petitioner is defendant No.2 who was proceeded against ex parte after service. He had earlier refused to accept notice, therefore, he was summoned by munadi.

It is pertinent to mention here that the trial Court has dismissed the application on the following grounds:-

- (1) The application for setting aside the ex parte proceedings has been filed at a belated stage i.e. after the gap of four years.
- (2) The adjudication regarding acquisition of knowledge regarding pendency of the suit is vague and unbelievable.
- (3) The applicant is real brother of defendant No.1, who is already contesting the suit and that he has been residing with the applicant as such it is unbelievable that the applicant had no knowledge regarding the present suit for last more than four years.
- (4) That he intends to delay the proceedings and that the suit is an old suit.

Learned counsel for the petitioner has vehemently contended that the approach of the trial Court for setting aside the ex parte proceedings against the defendants under Order 9 Rule 7 CPC should be liberal. He has relied upon *Kuldip Kaur Vs. Gurdeep Singh, 1993 (2) PLR 703* and *Karnataka Handloom Development Corporation Ltd. Vs. B.S. Chopra, 1999(3) PLR (Delhi) 44* wherein the application filed after three years of passing of ex parte order had been allowed and *Ramhet and others Vs. Ajaypal Singh and others, 2003 (2) RCR (Civil) 322* to contend that the application under Order 9 Rule 7 CPC filed by the defendants should be liberally allowed by the Courts.

I have heard learned counsel for the petitioner and considered the case law cited by him.

There is no dispute that the rules of natural justice require that a fair opportunity of hearing should be given to each of the parties but the said liberty, in my opinion, should not be used by a person to abuse the process of the Court especially by evading appearance despite knowledge of

the litigation pending. The suit of the plaintiff-respondent has been pending since the year 2009. There are twenty three defendants out of which defendant-petitioner along with his real brother are the contesting respondent-defendants. Written statement filed by the brothers is not different from the plea of his co-defendants. The detail reasons given by the trial Court do not warrant inference at this stage.

It has been informed by the counsel for the parties that the suit is at the stage of recording of the defendants evidence. The only relief under law which can be granted to the petitioner is that he may be permitted to participate in the further proceedings but the clock of the civil proceedings cannot be reverted back to the stage of the filing of written statement, fresh framing of issues and further recalling of the witnesses. The only relief which can be granted to the petitioner is that he can participate in the proceedings henceforth.

With abovesaid observations, this petition is dismissed to confirm the impugned order with a slight modification that petitioner will be allowed to participate in the further proceedings only henceforth.

(M.M.S. BEDI)
JUDGE

July 20, 2015
harsha