

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

Civil Revision No.2498 of 2016 (O&M)
Date of Decision: April 30, 2019

Saminder Singh & others

...Petitioners

Versus

Labh Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Nandan Jindal, Advocate,
for the petitioners.

Mr. Varun Garg, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The present revision petition is directed against the impugned order, whereby the application of the petitioner-defendants submitted by invoking the provisions of Order 9 Rule 13 CPC for setting-aside the ex-parte judgment and decree dated 23.12.2011, has been dismissed.

Mr. Nandan Jindal, learned counsel representing the petitioner-defendants submitted that the respondent-plaintiff instituted a suit for specific performance of the agreement to sell dated 29.08.2005 alleged to have been entered into by Sucha Singh father of the defendants and the writings dated 28.08.2006 and 26.02.2007, against the defendants, who were minors through their guardian Karnail Kaur. The suit is dated 20.10.2007. The suit was contested by filing written statement. However, on 19.10.2010 counsel had pleaded no instructions and on the same date,

petitioner-defendants were proceeded ex-parte resulting into ex-parte judgment and decree, *ibid*.

In pursuance to the receipt of the notice in execution petition, application under Order 9 Rule 13 CPC has been filed for setting-aside the ex-parte judgment and decree on the following grounds:-

- 1) The petitioner-defendants were minor;
- 2) Notice was required to be sent to the defendants in view of the statement suffered by the counsel qua no instructions.

The trial Court ignored both the aforementioned grounds by noticing the conduct of the defendants as on earlier occasion in 2009, they were proceeded ex-parte.

Per contra, Mr. Varun Garg, learned counsel for the respondent-plaintiff submitted that the conduct of the petitioner- defendants is writ large as they had been indulging in delaying the execution proceedings. They were watching the proceedings. The statement suffered by the counsel was basically on their instructions. They have taken the aforementioned stand which does not have any substance and, thus, prayed for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

The dates aforementioned are not in dispute. The law with regard to sufferance of a statement by the counsel has been pondered upon by Hon'ble Supreme Court in **Himalayan Cooperative Group Housing Society Versus Balwan Singh**, 2015(7) SCC 373 and by this Court in **Manwinder Singh Versus Manjeet Kaur**, 2015(8) R.C.R. (Civil) 637, whereby it has been noticed that as and when the counsel pleads no

instructions, notice has to be issued to the defendants as it is not decipher whether the instructions were willful or actually the defendants had not contacted the counsel. That itself was a ground for the Court below to set-aside the ex-parte judgment and decree and without commenting upon the age of the defendants, though the agreement to sell was executed by their father, who had unfortunately died.

In order to prevent miscarriage of justice, I am of the view that the petitioner-defendants should be given a chance to contest the suit on merits. Accordingly, the impugned orders are set-aside subject to payment of ₹10,000/- as costs, to be paid to the counsel for the respondent-plaintiff in the High Court.

Revision petition stands allowed.

April 30, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No