

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6041 of 2016 (O&M)
Date of decision: 12.09.2022

Karan Singh

..Petitioner

Versus

Tek Chand and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sushil Jain, Advocate,
for the petitioner.

Mr. Manoj Kaushik, Advocate
for respondent no.4.

ANIL KSHETARPAL, J(Oral)

The petitioner before this Court is a plaintiff in a suit for grant of decree of permanent injunction.

The trial court while allowing the application filed under Order IX Rule 13 CPC has set aside the ex-parte decree after finding that no notice was served on defendant no.4 and the presence of Sh. Rajeev Kant, Advocate, on behalf of defendant no.4, on the strength of memo of appearance on 15.03.2007 in the Court proceeding, is not proper.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the petitioner contends that the trial court failed to record any reason for setting aside the ex-parte decree which was passed on 09.01.2010. He further contends that defendant no.4 has failed to take any action against Sh. Rajeev Kant, Advocate, who appeared on his behalf without his authorization. He further submits that defendant no.4 had the knowledge of the pendency of the suit, therefore, the

trial court has wrongly exercised discretion in his favour.

The trial court has specifically recorded a finding that defendant no.4 was never served with the summons in the suit. No doubt, Sh. Rajeev Kant, Advocate, entered appearance for defendant no.4 on 15.03.2007 while filing memo of appearance, however, he never appeared thereafter. There is no power of attorney executed by defendant no.4 in favour of Sh. Rajeev Kant, Advocate, authorizing him to appear as his counsel. Thus, sound reasons have been recorded by the trial court to set aside the ex-parte decree.

As regard the the argument of the learned counsel that defendant no.4 has failed to take action against Sh. Rajeev Kant, Advocate. It may be noted that it depends upon the facts and circumstances of the case. It is not necessary that before defendant no.4 files an application, it is necessary for him to file a complaint against Sh. Rajeev Kant, Advocate, particularly when it is his stand that he never engaged him. The dispute is with regard to immovable property located in Faridabad City. Both the parties are claiming the said property. The court has only granted an opportunity to defendant no.4 to contest the suit on merits.

In such circumstances, this court does not find it appropriate to exercise its supervisory jurisdiction to interfere with the order.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

September 12, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*