



In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1563 of 2023

Date of Decision: 18.03.2025

Mahabir

... Petitioner(s)

Versus

Chhabil Dass and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Parmod Kumar Parmar, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. Despite receipt of notice, respondent No. 2 has not entered appearance.
2. A decree for specific performance of the agreement to sell was passed in favour of the petitioner on 30.08.2011, which, in appeal, was affirmed on 30.10.2013. Subsequently, respondent No.2-Dharam Singh filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") to set aside the *ex parte* proceedings in which notice was issued to the petitioner, however, he could not appear and hence, was proceeded against *ex parte* on 30.09.2019. Subsequently, the petitioner was filed an application on 10.12.2021 which was dismissed on 25.07.2022.
3. The learned counsel representing the petitioner has informed the Court that the case is now fixed for the applicant's (respondent No.2) evidence, however, no evidence has been recorded so far.

4. It appears that the Trial court has erred in dismissing the petitioner's application on the ground that the order vide which the applicant (petitioner) was proceeded against *ex parte* operates for that particular date. Subsequently, the defendant or respondent can enter appearance. He is required to file an application for setting aside the *ex parte* order/proceedings only if he wants that he should be relegated to the position when he was proceeded against *ex parte*.

5. In this case, the judgment debtor has filed an application for setting the *ex parte* decree in which the petitioner can, at the most, file reply and thereafter, the onus is on the judgment debtor to prove that he could not appear due to sufficient cause. The learned counsel has disclosed that the case is now fixed for 03.04.2025.

6. Keeping in view aforesaid facts, the petitioner is permitted to file reply to the application filed by respondent No.2 (applicant before the Trial Court) before the next date of hearing. He will be permitted to cross-examine the witnesses sought to be examined by the respondent No.2.

7. With the observations made above, the present revision petition is disposed of.

(Anil Kshetarpal)
Judge

March 18, 2025

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No