

## Gurdev Singh Vs Harchand Singh and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 30, 1999

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 9 Rule 13

**Citation:** (1999) 3 CivCC 503 : (1999) 123 PLR 856 : (1999) 4 RCR(Civil) 182

**Hon'ble Judges:** R.L. Anand, J

**Bench:** Single Bench

**Advocate:** M.L. Saggar, for the Appellant; T.N. Gupta, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

R.L. Anand, J.

This is a civil revision and has been directed against the order dated 17.1.1998 passed by the Court of Additional District

Judge, Ludhiana which affirmed the order dated 6.9.1993 passed by the Court of Sub Judge 1st Class, Ludhiana which dismissed the application

of the petitioner under Order 9, Rule 13, C.P.C.

2. The brief facts can be noticed in the following manner:-

Harchand Singh filed a suit for possession by way of specific performance against Gurdev Singh, Gurmit Singh and Ajmer Singh, defendants No.

1 to 3 respectively. The suit was instituted on 23.12.1983 for the specific performance of the agreement of sale dated 17.8.1983. Defendant No.

1, the present petitioner, engaged his counsel. The proceedings of the trial Court show that the counsel for the parties were present before the trial

Court on 28.8.1984. On that day written statements on behalf of the defendants No. 2 and 3 were filed. They are the subsequent vendees. Written

statement on behalf of defendant No. 1 was not filed and the case was adjourned to 11.9.1984. On that day the counsel for defendant No. 1

(present petitioner) appeared and did not file the written statement. Even defendant No. 1 did not appear before the trial Court. Request was

made on behalf of the counsel for defendant No. 1 to the Court for granting more time in order to file the written statement and final opportunity

was sought. The same was granted and the case was adjourned to 27.9.1984. On that day the appearance was given only by defendants No. 2

and 3 and nobody appeared on behalf of the defendant No. 1 and at 3.15 p.m. defendant No. 1 was proceeded ex parte and the case was

adjourned for replication and issues to 13.10.1984. The record of the trial Court further shows that even after 13.10.1984 the case remained

pending before the trial Court upto 4.2.1985 when ex parte decree for possession was granted in favour of the plaintiff against the defendants.

It may also be mentioned here that defendant No. 1 had already mortgaged the property with the plaintiff and subsequently, as per the allegations

of the plaintiff, he entered into an agreement of sale on the basis of which the specific performance was sought for. The plaintiff was already in

possession of the property being usufructuary mortgagee.

The application was moved for setting aside the ex parte decree on 15.11.1986 and vide order dated 6.9.1993 the learned trial Court, dismissed

the same. Aggrieved by the order of the trial Court, the petitioner filed the first appeal in the Court of Additional District Judge, Ludhiana, which

dismissed the appeal on 17.1.1998 and again aggrieved by that order, the present revision.

3. I have heard Mr. M.L. Saggar, Advocate on behalf of the petitioner, Mr. T.N. Gupta, Advocate on behalf of the respondents No. 1 and 2,

who are LR.s. of Harchand Singh (plaintiff/decree-holder) and with their assistance I have gone through the records of this case.

4. A vigorous effort was made by Mr. Saggar to show that there was a sufficient cause which has been established on the records as to why the

petitioner did not appear before the trial Court. He submitted that the petitioner in all his vigilance and due diligence engaged Mr. M.L. Jhanji, a

renowned lawyer of Ludhiana and the petitioner had all times been thinking that his interest are duly protected and if the lawyer did not give the

appearance before the trial Court on 27.9.1984, the petitioner should not be allowed to suffer. He further submitted that the petitioner came to

know about the ex parte decree on 8.11.1986 through the Sarpanch of the village and he did not waste the time in filing the application under

Order 9 Rule 13 C.P.C. He also submitted that the agreement was never executed by his client Harchand Singh and in the interest of justice it is

necessary that there should be proper adjudication with regard to the execution of agreement by Harchand Singh deceased and the impugned

order should be set aside in the interest of justice also.

5. The submissions raised by the learned counsel for the petitioner have been vehemently opposed by the learned counsel appearing on behalf of

respondents No. 1 and 2 on the plea that the petitioner remained negligent throughout in defending the litigation. In fact, the petitioner had lost all

interest in the litigation and that is the reason he did not appear intentionally on 27.9.1984 when the ex-parte proceedings were ordered against

him. He further submitted that the ex parte decree for possession was passed on 4.2.1985 and the sale-deed was executed on 16.2.1986 under

the orders of the Court. The petitioner had already lost all the interest being the mortgagor of the property and he has taken a false plea that he was

desirous to contest the proceedings somewhere in the year 1986.

6. After hearing the learned counsel for the parties, I am of the considered opinion that this revision cannot succeed. Order 9 Rule 13 lays down

as follows:-

Setting aside decree ex parte against defendant.- In any case in which a decree is passed ex parte against a defendant, he may apply to the Court

by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he, was

prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as

against him upon such terms as to costs payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any

of the other defendants also:

Provided further that no Court shall set aside a decree passed ex-parte merely on the ground that there has been an irregularity in the service of

summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiffs claim.

Explanation:- Where there has been an appeal against a decree passed ex-parte under this rule, and the appeal has been disposed of on any

ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte

decree.

A reading of the above would show that ex parte decree can only be set aside if the defendant-petitioner shows that there was a sufficient cause.

Sufficient cause will be a question of fact depending upon facts of each case. The perusal of the interim orders of the trial Court would show that

the suit was pending before the trial Court on 28.8.1984 at one stage. On that day written statement on behalf of defendants No. 2 and 3 were

filed and the case was adjourned for the filing of written statement on behalf of defendant No. 1 to 11.9.1984. The order further shows that it was

passed in the presence of the counsel for the parties. On 11.9.1984, again the counsel for the parties were present and the counsel for the

petitioner made a request to the Court for granting a final opportunity so that the written statement may be filed. This request was accepted by the

trial Court and the case was adjourned to 27.9.1984. On the day neither the petitioner nor his counsel appeared and the Court had to wait upto

3.15 p.m. as per the High Court Rules and Orders and in that eventuality ex parte order was passed against the defendant No. 1. The conduct of

defendant No. 1 further shows that right from 27.9.1984 upto 4.2.1985 he did not instruct his counsel for setting aside the ex parte order nor he

engaged any other counsel in order to give the instructions for the setting aside the ex parte order. So much so, even after 4.2.1985 the petitioner

wasted one year and eight months in filing the present application under Order 9 Rule 13 C.P.C.

7. In such like cases it is always the anxiety of the Court to ensure that justice should be done to the logical conclusion, but a more mischief will be

caused to the decree-holder if the ex parte decree is set aside. In this case the original vendee Harchand Singh has already expired. The vendees

are in possession of the property and the sale-deed has already been executed in their favour. After a lapse of 14 years, it will be a mockery of law

if the ex parte decree is set aside when the judgment debtor is to be blamed. Hardly any sufficient ground is made out for setting aside the ex parte

decree dated 4.2.1985. No merit. Dismissed.