

**(1999) 10 P&H CK 0021**

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

**Case No:** Civil Revision No. 1335 of 1999

Balwinder Singh

APPELLANT

Vs

Tarsem Lal

RESPONDENT

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**Date of Decision:** Oct. 8, 1999

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13

**Citation:** (2001) 1 CivCC 143 : (2000) 126 PLR 651 : (2000) 4 RCR(Civil) 208

**Hon'ble Judges:** M.L. Singhal, J

**Bench:** Single Bench

**Advocate:** Kanwaljit Singh, for the Appellant; G.S. Savra, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

M.L. Singhal, J.

Vide order dated 24.2.1999 passed by the Additional Civil Judge (Sr. Division), Kharar, ex parte decree dated 21.3.1997 passed in favour of Balwinder Singh against Tarsem Lal in a suit for specific performance was set aside.

2. Facts: Balwinder Singh - plaintiff (petitioner herein) filed suit for possession through specific performance against Tarsem Lal-defendant (respondent herein) on the basis of agreement to sell dated 5.6.1993 for the purchase of house belonging to him for a sum of Rs. 1,03,000/-. As per Balwinder Singh, he had paid entire sale consideration to Tarsem Lal. Only a few instalments were to be paid to the Housing Board which he (Balwinder Singh) was always ready and willing to pay. Sh. Tara Chand Gupta, Advocate was the counsel for Tarsem Lal. After Tarsem Lal had engaged Shri T.C. Gupta as his counsel, he did not contact him being under the impression that once he had engaged an Advocate, he would himself conduct the entire case and would inform him about the further proceedings. Tarsem Lal fell ill and his wife also remained ill. He remained under mental tension. He could not contact Sh. T.C. Gupta, Advocate. Shri T.C. Gupta, Advocate had the impression as if

he was not interested in contesting the suit for specific performance and he (Sh. T.C. Gupta, Advocate) accordingly made statement pleading no instructions in the case on his behalf. Eventually, ex parte decree was passed. He came to know about the passing of the ex parte decree when notice of the draft sale deed was received at his house. When notice of the draft sale deed was received at his house, he enquired into the matter and came to know that on 21.3.1997, ex parte decree had been passed against him. Thereupon, he moved an application under Order 9 Rule 13 of the CPC for setting aside the ex parte decree dated 21.3.1997 before the learned Additional Civil Judge (Sr. Division), Kharar in which he pleaded that his absence was not intentional but was occasioned because of the aforesaid circumstances.

3. Balwinder Singh contested this application urging that he (Tarsem Lal) came to the Court regularly in the beginning and was appearing in Court with his counsel. It was denied that he had fallen ill. If he had fallen ill how was he attending the Court regularly. He was negligent and absented from the Court. It was further alleged that ex-parte proceedings were ordered by the Court when Shri T.C. Gupta, Advocate had made statement pleading no instructions in the case.

4. Learned Additional Civil Judge (Sr. Division), Kharar set aside the ex parte decree vide order dated 24.2.1999 feeling that the absence of Tarsem Lal was not intentional and his absence was occasioned by the circumstances beyond his control, as also due to the mistaken impression which he had carried after engaging Sh. T.C. Gupta, Advocate that he was not required to appear and so Shri T.C. Gupta would take care of the case on his behalf, plead and act.

5. Aggrieved from this order dated 24.2.1999 passed by the Additional Civil Judge (Sr. Division), Kharar, Balwinder Singh has come up in revision to this Court.

6. I have heard the learned counsel for the parties and gone through the record.

7. Learned counsel for the petitioner submitted that there was no occasion for the learned Additional Civil Judge (Sr. Division), Kharar to have set aside the ex parte decree when Tarsem Lal Respondent was negligent. He ought to have appeared before the Court and defended the suit. It was submitted that there is no evidence that he stopped appearing before the Court being under the impression that he had engaged Shri T.C. Gupta, Advocate and that he would himself continue appearing and conducting the case and would inform him about the further proceedings. It was submitted that his negligence should not recoil upon the petitioner - plaintiff Balwinder Singh.

8. Suffice it to say, there is no evidence that while pleading no instructions in the case on behalf of Tarsem Lal, Shri T.C. Gupta, stated before the Court that he had received some letter or message from him (Tarsem Lal) that he should stop appearing before the Court and that let there be ex parte judgment/decreed in the case. Shri T.C. Gupta, Advocate should not have made this statement before the Court, pleading no instructions on behalf of Tarsem Lal. Instead, he should have

prayed for the grant of adjournment to him saying that let him contact his client and find out whether he was interested in contesting the suit. Before acting upon the statement of Shri T.C. Gupta, Advocate and proceeding against Tarsem Lal ex parte, Court should have issued notice to Tarsem Lal calling upon him to, appear before it or arm Shri T.C. Gupta, Advocate with the necessary instructions. Court did not do so but ordered ex parte proceedings to be taken against Tarsem Lal abruptly acting on the Statement of Shri T.C. Gupta, Advocate.

9. It was observed by the Hon"ble Supreme Court in Malkiat Singh and Anr. v. Joginder Singh and Ors. (1998)118 P.L.R. 271 (S.C.) that where appellant's counsel pleaded no instructions and consequently case was decided ex parte without the Court having issued any notice to the appellants who were admittedly not present on the date, the appellants cannot be said to be at fault. It was observed that the trial Court which had admittedly not issued any notice to the appellants after their counsel had re-ported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when the counsel reported no instructions. The appellants cannot, in the facts and circumstances of the case, be said to be at fault and they should not suffer. In taking this view, the Hon"ble Supreme Court relied upon judgment in [Tahil Ram Issardas Sadarangani and others Vs. Ramchand Issardas Sadarangani and another](#), . These observations were made by the Hon"ble Supreme Court on the following facts:

10. The appellants were tried for the murder of one Harpal Singh and on conviction, were sentenced to suffer life imprisonment and to pay a fine of Rs. 1000/- by the learned Special Court, Ludhiana vide judgment dated 1.4.1985. The respondents, it appears, on 16.8,1985 filed a suit in the Court of learned Sub Judge Ist Class, Samrala claiming damages from the appellants to the tune of Rs. 1,00,000/- for deprivation of the income to the family members which they used to get from deceased Harpal Singh. The claim in the suit was contested by the appellants. They filed written statement and engaged a counsel to defend the suit. The trial Court, on the basis of the pleadings of the parties, framed a number of issues. After two witnesses for the plaintiffs in that suit had been examined and cross-examined, it transpired that on 18.11.1991, learned counsel who had been engaged by the appellants herein for defending them in the suit, pleaded "no instructions" before the Court. As a result of the counsel pleading no instructions , the appellants were proceeded ex parte, On 8.2.1992, the learned trial Court passed an ex parte decree against the appellants.

11. In my opinion, the impugned order suffers from no illegality or infirmity. Even otherwise also, there was no gain to Tarsem Lal in allowing himself to be proceeded against ex parte and suffering a decree for specific performance against him. Dismissed.