



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

CR-3910-2024

Date of decision : 02.09.2025

SANT LAL

...Petitioner

Versus

PAWAN KUMAR AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Preeti Singh, Advocate
for the petitioner.

Mr. Jagdish Manchanda, Advocate, and
Mr. Nischal Chetanya Manchanda, Advocate
for respondent No.1.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 24.01.2024 whereby application filed by the petitioner under Order IX Rule 13 CPC for setting aside *ex parte* decree has been dismissed and further affirmed by the Appellate Court.

2. Petitioner was arraigned as defendant No.2 in a suit for possession by way of specific performance *qua* agreement to sell dated 29.02.2016. Though defendant initially appeared through counsel and filed written statement but was thereafter proceeded *ex parte* vide order dated 17.09.2019. The trial finally culminated in *ex parte* judgment and decree dated 15.02.2021.

3. Application for setting aside *ex parte* judgment and decree was moved on 13.09.2022 along with an application filed under Section 5 of the



Limitation Act, 1963 seeking condonation of delay. The same stands rejected by the Trial Court. The order passed by the Trial Court stands affirmed by the Lower Appellate Court.

4. Counsel for the petitioner has assailed the findings recorded by the Courts below. She submits that the defendant after receiving summons, engaged a counsel who assured defendant that it being a civil matter, defendant is not required to come on each and every date. Believing his counsel, defendant became carefree. It was only at the time the execution was filed that the defendant/applicant came to know of *ex parte* judgment and decree. Immediately the application was moved.

5. Having considered the contentions raised by counsel for the parties and after perusing the records of the case, this Court finds that the service of the applicant/defendant No.2 is not in dispute. Rather the applicant/petitioner appeared and filed written statement and thereafter opted not to appear and was proceeded *ex parte* on 17.09.2019. It is highly unbelievable that for more than 2 years, the petitioner remained oblivious of the suit pending against him, that too, suit for possession by way of specific performance of agreement to sell of a moveable property. From the conduct of the applicant/petitioner, it is evident that the applicant was sitting on the fence waiting for the decision of the suit. It is only with an intent to delay the execution proceedings that the present application under Order IX Rule 13 CPC has been filed. Accordingly, the Courts below have rightly



non-suited the petitioner dismissing the application filed under Order IX Rule 13 CPC.

6. Resultantly, finding no merit in the present petition, the same is ordered to be dismissed.

September 02, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No