

A DR. SHIVDEV SINGH GREWAL THROUGH
DR. AMRIK SINGH SANDHU
v.
HARGURBACHAN SINGH GREWAL

B OCTOBER 7, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Code of Civil Procedure, 1908 :

C *Order IX, Rule 13—Application for setting aside ex-parte decree—
Limitation—Suit for declaration as to title and for possession—Defendant
residing in Malaysia—After one month of issue of summons suit ordered to
proceed ex-parte—Ex-parte decree passed—Defendant filing application for
setting aside ex-parte decree, with a delay of 11 days—Courts below rejecting
the application—Held, the trial court should have given sufficient time so that
D the defendant would have an opportunity to contest the suit—In the cir-
cumstances it would be legitimate to conclude that notice might not have been
served on him within the time—Moreover, the application was filed through
power of attorney—Dismissal of the application set aside—Ex-parte decree
also set aside—Matter would be adjudicated on merits.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13242 of
1996.

From the Judgment and Order dated 25.7.94 of the Punjab &
Haryana High Court in C.R. No. 311 of 1994.

F R.K. Jain Ms. Abha R. Sharma and Neeraj Jain for the Appellant.
P.P. Rao, Sanjay Bansal and G.K. Bansal for the Respondent.

The following Order of the Court was delivered :

G Leave granted.

We have heard learned counsel on both sides.

This appeal arises from the order of the learned single Judge of the
Punjab & Haryana High Court made on July 25, 1994 in C.R. No. 311/94.

H It is rather unfortunate that the brothers have to have a legal fight in

respect of the property. We are not expressing any opinion on merits in the matter. Suffice it to state that the respondent filed Civil Suit No. 178/85 on the file of the Trial Court for a declaration of title to the property as an owner and for possession thereof. The said suit came to be filed on May 27, 1985. Pursuant to service of summons, on his sending through post his written arguments in the matter from Malaysia on November 11, 1985, the learned Sub-Judge, Ludhiana dismissed the suit. It would appear that subsequently the respondent filed the present suit for declaration of his title and that suit came to be decreed *ex-parte* on July 22, 1986. The appellant filed an application on December 24, 1986 to set aside the *ex-parte* decree which was dismissed. On appeal, it was confirmed and in revision, the High Court declined to interfere. Thus, this appeal by special leave.

In is not in dispute that the tenant, Dr. Amrik Singh Sandhu filed an application under Section 13 of the East Punjab Urban Rent Restriction Act against the respondent on August 22, 1986 wherein he had mentioned that the suit filed by the respondent came to be decreed on July 22, 1986. This fact had come to the knowledge of the respondent on November 13, 1986 and immediately action was taken by seeking to setting aside the *ex-parte* decree obtained by the respondent. Admittedly, the application under Order IX, Rule 13 CPC came to be filed on December 24, 1986 with delay of 11 days only. There was hardly any delay in filing the application. The question is: whether the appellant has shown sufficient cause for not filing the application to set aside the *ex-parte* decree?

The admitted position is that the appellant is residing in Malaysia. He was set *ex-parte* after one month after summons was sent in the suit to Malaysia. It is hardly expected to get summon served in Malaysia within such a short period. The trial Court followed grammar of law but the Court would have given sufficient long time so that the appellant would have an opportunity to contest the suit. One important fact that cannot be lost sight of is that in matters relating to the ownership of the property, each party claims to be the owner of the property. On an earlier occasion, when an attempt was made by the respondent by seeking declaration of title and when the summons were served on him, immediately, the appellant had sent his written statement contesting his claim. He would not stand to gain by remaining *ex-parte*. It would be clear from the above that normally if one has received the notice, no one can expect that he would not contest

- A the suit or would remain *ex-parte* and would not allow *ex-parte* declaration of title to be given against him. Under These circumstances, it would be legitimate to conclude that notice might not have been served on him within the time. On coming to know of the *ex-parte* decree obtained by the respondent against him on November 13, 1986, the appellant filed the application on December 24, 1986 through his Power of Attorney. One would expect that unless the Attorney-holder communicated to the appellant and got his instructions to file the application, it would not be possible for him to proceed with the matter. Under these circumstances, the approach adopted by the courts below is clearly unjustified.
- B
- C The appeal is accordingly allowed. The dismissal of the application under Order IX, Rule 13 CPC stands set aside. The *ex-parte* decree is set aside. It is open to the parties to have the matter adjudicated on merits. No costs.

R.P.

Appeal allowed.