



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 3780/2026

Sua Lal S/o Sh. Mohar Singh, Aged About 66 Years, R/o Village Barkheda, Tehsil Malakheda, District Alwar, Raj.

-----Petitioner

Versus

Babulal S/o Sh. Prabhudayal Gupta, Aged About 67 Years, R/o Village Barkheda, Tehsil Malakheda, District Alwar, Raj.

-----Respondent

For Petitioner(s)	:	Mr. Nikhil Saini, Ms. Nikita Singhal, Mr. Lakshya Bajad
For Respondent(s)	:	Mr. Akash Gupta, Ms. Mitali Khandal

HON'BLE MR. JUSTICE MANEESH SHARMA

Order

08/05/2026

1. The present writ petition has been preferred by the petitioner assailing the impugned orders dated 28.01.2026 passed by the learned Additional District & Sessions Judge No.2, Alwar, in the same Civil Suit No.2/2022 titled as '*Babulal Vs. Sualal*', whereby the application filed by the petitioner under Order 9 Rule 7 of the Code of Civil Procedure, 1908 (CPC) for setting aside the *ex-parte* proceedings against the petitioner, was rejected.

2. Brief facts giving rise to the present writ petition are that the respondent (plaintiff therein) filed a suit on 16.12.2021 for specific performance of the agreement to sell dated 02.08.2019, concerning the agricultural land situated in *Khasra* Nos. 586, 587, 588, 589, 590 and 591, admeasuring 2.3500 Hq. It was stated in the plaint that the petitioner (defendant therein) agreed to sell



1/4th part of his land to the respondent for a consideration of Rs. 6,50,000/-, out of which a sum of Rs. 6,00,000/- has already been paid to the petitioner. It was further stated that the petitioner failed to execute the agreement dated 02.08.2019 in favour of the respondent and hand over the possession of the land. Accordingly prayed for a decree of specific performance and injunction.

3. After service of notice, the petitioner filed the written statement on 18.07.2022 and denied the allegations made in the plaint. It was contended that the petitioner never agreed to sell the suit land to the respondent rather the petitioner borrowed a sum of Rs. 2,00,000/- from the respondent and agreed to mortgage his land in lieu of the said loan. However, the respondent, *mala fidely* and taking advantage of the petitioner being illiterate, under the guise of the mortgage deed, fraudulently obtained the thumb impression of the petitioner on the alleged agreement. Accordingly, prayed for dismissal of the suit.

4. During the course of the trial, the petitioner remained absent and consequently, *ex-parte* proceedings were initiated against him on 22.08.2023.

5. Upon getting knowledge of the order dated 22.08.2023 and that *ex-parte* proceedings were initiated against him, on 23.12.2025, the petitioner filed an application under Order 9 Rule 7 of CPC, for setting aside the *ex-parte* proceedings stating that the son of the petitioner is suffering from serious mental illness and the petitioner remained occupied in the treatment of his son at Jaipur. It was further stated that the petitioner was assured by his counsel that whenever his presence in the matter would be



required, he would be informed in advance. Therefore, the petitioner remained under the *bona fide* belief and the petitioner's absence was not coupled with any *mala fide*, thus, the petitioner wants to contest the suit on merits. Accordingly, prayed for setting aside the *ex-parte* order.

6. The said application was contested by the respondent by filing a detailed reply dated 28.01.2026 refuting the averments and accordingly, prayed to dismissal of the application.

7. After hearing the arguments of the parties upon the said application, the learned Trial Court, vide order dated 28.01.2026, rejected the petitioner's application for setting aside the *ex-parte* proceedings.

8. Aggrieved by which, the present petitioner has preferred the present writ petition.

9. During the pendency of the present writ petition, the petitioner filed an application (IA No.1/2026) under Article 226 of the Constitution of India for taking on record the medical reports of his son for the period from January, 2023 to December, 2025. Since the genuineness of the aforesaid documents are not doubted and for the reasons stated in the said application, the same is allowed and the annexed documents are taken on record.

10. Learned counsel for the petitioner submits that the petitioner is senior citizen aged about 67 years and his son is suffering from serious mental illness thus, requires regular medical treatment at Government Hospitals in Jaipur. He further submits that this Court, vide order dated 26.02.2026, stayed further proceedings in the main suit, therefore, in order to show his *bona fide* qua the



ground for setting aside the *ex-parte* proceedings, the petitioner has filed an application (IA No. 1/2026) before this Court for taking the documents pertaining to the petitioner's son's medical treatment on record.

11. He also submits that since the present matter relates to immovable property, if the petitioner is not afforded an opportunity of hearing, his rights will be seriously prejudiced. Accordingly, he prays that the petitioner may be granted an opportunity to contest the suit, and the impugned order dated 28.01.2026 and 22.08.2023 may kindly be set aside and.

12. *Per contra*, learned counsel for the respondent vehemently opposes the submissions made by the learned counsel for the petitioner and submits that the petitioner has failed to establish sufficient cause for setting aside the *ex-parte* proceedings. He further submits that the impugned order has been passed after considering the fact that the petitioner failed to produce any medical report/documents pertaining to the alleged ailment of his son. Accordingly, he submits that the impugned order is a perfectly just order, thus, no interference is required with the impugned order.

13. Heard and considered the submissions made by learned counsel for the parties, perused the material available on record as well as the impugned orders.

14. A bare perusal of the record reveals that it is an undisputed fact that the plaintiff/respondent filed a suit for specific performance on 16.12.2021 in relation to an agreement dated 02.08.2019. Due to the non-appearance of the petitioner before



the learned Trial Court, *ex-parte* proceedings were initiated against him vide order dated 22.08.2023. Consequently, the petitioner filed an application under Order 9 Rule 7 CPC seeking setting aside of the *ex-parte* proceedings; however, the said application came to be dismissed by the learned Trial Court vide the impugned order dated 28.01.2026.

15. From perusal of the impugned order dated 28.01.2026, it is evident that the petitioner's application was rejected primarily on the ground that he had failed to produce any document relating to the ailment of his son. The learned Court below further observed that no sufficient cause had been shown for the petitioner's aforesaid non-appearance. Accordingly, the application seeking setting aside of the *ex-parte* proceedings was rejected.

16. From perusal of the aforesaid medical prescriptions pertaining to the petitioner's son - *Mukesh Chaudhary*, it is evident that he was suffering from a mental ailment and was undergoing treatment at the Department of Psychiatry, SMS Medical College, Jaipur from January, 2023 to December, 2025. The medical certificates and prescriptions placed on record sufficiently substantiate the grounds for the petitioner's non-appearance before the learned Trial Court on 22.08.2023.

17. The record of the case further reveals that the written statement had already been filed by the petitioner; however, owing to the medical condition of his son, the petitioner could not appear before the learned Court below. The application seeking setting aside of the *ex-parte* proceedings was rejected by the learned Trial Court primarily on the premise that no medical



prescriptions/documents had been placed on record in support thereof. Since such documents have now been placed on record before this Court and pertain to treatment undertaken at the Department of Psychiatry, SMS Medical College, Jaipur, as well as various other hospitals, which reflects that the petitioner's son was under medical treatment during January, 2023 to December, 2025, shows a sufficient cause for setting aside the order dated 22.08.2023 and therefore, interference by this Court is warranted.

18. Moreover, it is trite law that Courts are expected to adjudicate matters on merits, and the parties ought to be afforded a fair opportunity to contest the proceedings on merits. Therefore, this Court is of the considered view that denying the petitioner an opportunity to contest the suit would cause serious prejudice to his civil rights. At the same time, considering that the proceedings of the suit has reached to an advance stage, the plaintiff/respondent is also entitled to be compensated by way of costs.

19. Accordingly, considering the overall facts and circumstances of the case and the discussion made hereinabove, the impugned orders dated 22.08.2023 and 28.01.2026 passed by the learned Trial Court are hereby set aside. Consequently, the application dated 23.12.2025, seeking setting aside of the *ex-parte* proceedings stands allowed, subject to payment of costs of Rs.10,000/- by the petitioner to the respondent.

20. Furthermore, considering the fact that the suit has been pending since the year 2021 and the plaintiff's evidence already



stands concluded, the learned Trial Court is directed to expedite the proceedings of the suit.

21. With the aforesaid direction, the present civil writ petition is disposed of.

22. All pending application(s), if any, shall stand disposed of.

(MANEESH SHARMA),J