

**Neutral Citation No. - 2024:AHC-LKO:22144****Court No. - 8**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 877 of 2024

**Petitioner :-** Smt. Indra Wati

**Respondent :-** Harihar Prasad Upadhyay And Another

**Counsel for Petitioner :-** Anil Kumar Pandey, Arvind Kumar Mishra,  
Mohammad Ehtesham Khan

**Counsel for Respondent :-** Girish Chandra Sinha

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**Hon'ble Jaspreet Singh,J.**

1. Heard Shri M.E. Khan, learned counsel for the petitioner and Shri Girish Chandra Sinha, learned counsel for the private-respondents.
2. The petitioner assails the order dated 19.10.2023 passed by the District Judge, Sultanpur whereby the appeal preferred by the private-respondents bearing No.51/2022 has been allowed, as a result, the application under Order IX Rule 13 CPC, filed by the private-respondents, which was dismissed by the trial Court by means of the order dated 20.05.2022 has been allowed by the appellate Court.
3. In order to put the controversy in a perspective, certain brief facts giving rise to the instant petition, are being noticed hereinafter.
4. The petitioner has filed a suit for cancellation of an agreement dated 27.08.2014. The said suit was registered as Regular Suit No.1272/2015 which came to be decided ex-parte on 25.09.2020. Against the said judgment and decree, the private-respondents moved an application under Order IX Rule 13 CPC on 23.02.2021 which was registered as Misc. Case No.13/2021. Objections were submitted against the said application which found favour with the trial Court and the said application came to be dismissed against which, as noticed above, an appeal was filed by the

private-respondents, which has been allowed by means of the impugned order.

5. The submission of the learned counsel for the petitioner is that from a perusal of the application preferred by the private-respondents, a copy of which has been placed on record as Annexure No.7, it was stated that on 21.02.2021, they acquired the knowledge regarding some pendency of some proceedings, which was in pursuance of the notice issued in an execution case. That upon gathering information regarding the Execution Case No.5/2020, it revealed that the petitioner had filed a suit for cancellation of an agreement bearing No.1272/2015 which came to be decreed ex-parte on 25.09.2020. It was also stated that the private-respondents had no knowledge of the said proceedings and even otherwise the record indicated that the service of summons were affected on the private-respondents on the basis of the publication made in a Hindi Daily "Adarsh Jyoti". It was urged that since no summons were served on the private-respondents, accordingly, the ex-parte judgment and decree dated 25.09.2020 be set aside and the private-respondents be granted an opportunity to contest the proceedings on merits.

6. It is urged that this stand taken by the private-respondents was patently erroneous inasmuch as in the execution case, the petitioner had not taken steps which could have been issued and thus in the aforesaid circumstances the basic ground which was alleged by the private-respondents was patently false, hence, no such indulgence could have been granted in favour of the private-respondents while allowing the appeal.

7. It is further urged that this aspect was appropriately noticed by the

trial Court, while rejecting the application under Order IX Rule 13 CPC, but taking a lenient view, the lower appellate Court has allowed the appeal which is against the material on record.

8. It has also been urged that even in the main suit, the private-respondents had been served and they have been deliberately delaying the proceedings which resulted in ex-parte decree and such an appeal has incorrectly been allowed.

9. Shri Sinha, learned counsel appearing for the private-respondents submits that the grounds set up in the application under Order IX Rule 13 CPC has not to be read pedantically rather a justice oriented approach needs to be adopted inasmuch as that is not disputed that the proceedings were ex-parte and from the record, it revealed that there was no adequate notice inasmuch as the registered summons which was sent to the defendants returned unserved and there was no report of the trial Court insofar as the sufficiency of service is concerned. In what circumstances the publication was made is also not quite evident inasmuch as the trial Court ought to have recorded a subjective satisfaction that the defendants of the suit were deliberately evading service and only once such a satisfaction was recorded, the summons could be served through publication. Even otherwise, the publication has been made in local Hindi which has no wide circulation worth its name. In the aforesaid circumstances positive direction has been exercised by the lower appellate Court which requires no interference from this Court.

10. The Court has considered the rival submissions and also perused the material on record.

11. Insofar as the contention of the learned counsel for the petitioner is concerned that in the application under Order IX Rule 13 CPC it was stated by the defendants that they acquired knowledge on the basis of summons which were issued in the execution case on 21.02.2021 and that summons were not issued by the Court as the petitioner had not taken steps for issuance of notice, the submission may be correct that no notice was sent by the petitioner and, therefore, the ground per se may not sound plausible, but from the language of Order IX Rule 13 CPC it shows that wherein a suit which is set ex-parte for either want of service of summons on the defendants or for any other sufficient cause and if the party is able to satisfy the Court regarding his non-appearance then a decree can be set aside.

12. Taking note of the aforesaid and from the material on record, this Court finds that upon reading the contents of Paragraphs 1 to 3 of the application under Order IX Rule 13 CPC which indicates that even in the main suit the summons were not served and it is not disputed that there was no order passed by the Court or even on the registered cover sent by the Court that the summons were either refused or deliberately evaded by the defendants. In absence of clear report and the fact that the Hindi Daily "Adarsh Jyoti" did not have a wide circular and taking the proceedings with a justice oriented view, the cause shown by the defendants was found sufficient by the lower appellate Court. Once such a positive discretion has been exercised and it cannot be said that view taken by the lower appellate Court is such that no prudent person could have arrived at such a conclusion, hence, the view taken by the appellate Court cannot be faulted.

13. In such circumstances, this Court is not inclined to intervene in the aforesaid petition especially where the petitioner has adequate opportunity to contest the proceedings on merits.

14. In light of the aforesaid, this Court does not find that there is any merit in this petition which is accordingly dismissed at the admission stage itself.

15. It is further provided that since the suit is of the year 2015, it is expected that the parties shall cooperate and the Court shall also endeavour to decide the suit as expeditiously as possible without granting any unnecessary adjournment after affording full opportunity of hearing to the parties. In case any of the party is found to be misusing the liberty, the trial Court shall be at liberty of imposing progressive costs in terms of the decision of the Apex Court in **Vinod Seth v. Devinder Bajaj and Another; (2010) 8 SCC 1**.

**Order Date :- 13.03.2024**

Rakesh/-