

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2420 of 2015

Date of Decision.08.04.2015

Balkaran Singh

.....Petitioner

Versus

Amarjit Kaur

.....Respondent

Present: Mr. B.S. Aulakh, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The plaintiff who had obtained ex parte decree against the defendant for recovery of money had an adverse order at the Appellate Court on the application filed by the defendant to set aside the ex parte decree. The trial Court had dismissed the application finding that the defendant had actually been served with summons but she refused to receive the same on a plea that the plaint copy was not given and she had, therefore, clear knowledge of the fact of the institution of the suit on the date of hearing. Her absence in Court on the date of hearing was, therefore, found to be not justified and the Court dismissed the application for setting aside the ex parte decree. In appeal filed by the defendant-applicant, the Appellate Court reasoned that the provisions of the Civil Procedure Code required the service of summons to be effected along with the copy of the plaint and if it was not done, it is fair enough that the defendant must have an opportunity to contest the

case on merits.

2. The counsel appearing on behalf of the petitioner-plaintiff contends making reliance on the judgment of this Court that the non-service of copy of the plaint along with the summon must be taken to be only an irregular service and cannot be a ground for the person to remain ex parte and afford such a ground as entitling a person to have the decree set aside. I will not take this as an issue of law but I will find this to be an occasion where the question is whether discretion could be exercised or not. The lower Appellate Court decided to exercise discretion in favour of the defendant and allowed for contest on merits.

3. The order passed by the Appellate Court is maintained and the revision petition is dismissed.

(K. KANNAN)
JUDGE

April 08, 2015
Pankaj*