

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.3009 of 2014(O&M)

Date of decision:19.01.2015

Jarnail Singh

....Petitioner

Versus

Harbans Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Ms.Deepa Jain, Advocate, for
Mr.Malkeet Singh, Advocate, for the petitioner.

None for the respondent.

G.S.Sandhawalialia J.(Oral)

Challenge in the present revision petition, filed by the petitioner-plaintiff, is to the order dated 24.12.2013, whereby the appeal filed by the respondent-defendant was allowed by the Addl.District Judge, Jalandhar, subject to payment of ₹10,000/- as costs, to be paid to the plaintiff-petitioner. The appeal was directed by the defendant-respondent against the order dated 21.07.2012, whereby the application under Order 9 Rule 13 CPC had been dismissed.

It is apparent from the paperbook that the proceedings were never stayed and thus, the trial has continued, in pursuance of the directions of the Lower Appellate Court.

Counsel for the petitioner has neither furnished the complete address of the respondent nor served him, inspite of availing opportunity on 30.10.2014. It is admitted that the trial is carrying on, in pursuance of the order dated 24.12.2013. Keeping in mind the settled principle that the dispute should be adjudicated on merits and nobody should gain on account of technicalities, the

impugned order is not liable to be interfered with. The dispute pertains to a shop in question, for which, declaration has been sought by the petitioner-plaintiff and he was successful in the *ex parte* proceedings dated 13.01.2006, which have, accordingly, been set aside. The Lower Appellate Court has noticed that the summons issued had been refused by the defendant's brother, Manjeet Singh and his service was ordered to be effected by substituted means, by way of publication. The Process Server had failed to affix the summons at the outer door of the defendant and even the brother had himself informed the Process Server that the defendant had left the address. It was also noticed that the litigation was pertaining to the title of the immovable property, involving valuable rights of the parties and the Court should adjudicate upon merits and not on technical grounds and the Court should be keen to deliver justice. The Process Server had also not been examined and accordingly, a finding had been recorded that proper service had not been effected and the opposite party could be compensated by payment of costs. The decree was, thus, set aside on payment of ₹10,000/- as costs and the Court was directed to decide the suit, afresh.

In such circumstances, this Court is of the opinion that the reasoning which has been given by the Lower Appellate Court *ex facie* does not suffer from any material irregularity or illegality and accordingly, the present revision petition is not liable to be entertained and the same is, accordingly, dismissed, with the abovesaid observations.

19.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE