

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.411 of 2015 (O&M)
Date of Decision: 19.01.2015

Rajiv Kumar

. . . .Petitioner

Versus

Satnam Singh

. . . . Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Inderjeet Singh, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The plaintiff is in revision against the order of the appellate Court by which application filed by the defendant under Order 9 Rule 13 of the Code of Civil Procedure, 1908 [for short 'the CPC] has been allowed.

In short, the plaintiff filed a suit for specific performance of an agreement to sell dated 5.6.2007 purported to have been entered into between the parties. In the said suit, the defendant was proceeded against *ex parte* on 10.9.2008 and ultimately *ex parte* decree was passed against him on 19.5.2010. The defendant filed an application under Order 9 Rule 13 of the CPC. The Trial Court framed as many as three issues on the pleadings of the parties and after considering the evidence led by them, dismissed the application. Aggrieved against the order of the trial Court, the

defendant filed first appeal which has been allowed by the impugned order and hence, the present revision.

Learned counsel for the petitioner has argued that the Appellate Court has committed an error of law in allowing the application filed by the defendant though as per second proviso to Order 9 Rule 13 of the CPC, if the defendant has the knowledge about the pendency of the suit otherwise then the summons was served upon him by the Court, he would not have the liberty to challenge the *ex parte* order.

Learned counsel for the petitioner is asked to show as to on what basis he has argued that the defendant had the knowledge about the pendency of the suit otherwise then the service of summons by the Court.

Learned counsel for the petitioner has referred to the legal notice alleged to have been issued by his advocate before filing of the suit asking the defendant to perform his part of contract and has submitted that even that notice was avoided by the defendant as the postal authority had visited seven times to his house.

To my mind, this would not constitute the knowledge of the pendency of the suit because the legal notice was allegedly tried to be served upon the respondent prior to filing of the suit. Moreover, from the finding recorded by the Court below, I am convinced that the defendant was not served and the report was obtained from the process server by the plaintiff, who had made a report about Satpal instead of Satnam Singh and when appeared in the witness box could not give plausible and cogent reasons for not identifying the defendant and the Chowkider, who had told the

process server not only about the house of the defendant but also Satnam Singh, has not been examined.

In view thereof, I do not find any merit to interfere in the well reasoned order passed by the Appellate Court. Hence, the present revision petition is hereby dismissed.

19.01.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**