

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 4619 of 2015 (O&M)
Date of Decision: 27.07.2015.**

Amit Kumar

.....Petitioner

Versus

Rahul Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Kislay Panday, Advocate
for the petitioner.

Mr. Ashish Gupta, Advocate
for the caveators-respondents.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the orders dated 19.1.2015 (Annexure P-1) and 3.7.2015 (Annexure P-2).

Learned counsel for the petitioner has submitted that the Trial Court has erred in dismissing the application moved by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure, 1908 ('CPC' for short) for setting aside *ex parte* judgment/decreed dated 30.8.2012 and *ex parte* order dated 23.2.2012 whereby petitioner was proceeded *ex parte*. In fact, petitioner had not been duly served.

Learned counsel for the caveators-respondents on the other hand, has opposed the petition.

Respondents had filed suit for possession, recovery of mesne profits, arrears of rent, damages and mandatory injunction against the petitioner. The case of the respondents was that the petitioner had taken the premises in question on rent from them in August 2008. The lease agreement dated 5.8.2008 was executed between the parties for a period of 11 months. The agreed rate of rent was ₹ 15,000/- per month. After July 2010, petitioner had failed to pay the rent. Hence, the suit was filed by the respondents.

Petitioner was proceeded *ex parte* vide order dated 23.2.2012. *Ex parte* judgment/decreed was passed in favour of the respondents on 30.8.2012. Thereafter, petitioner moved an application under Order 9 Rule 13 CPC for setting aside *ex parte* judgment/decreed dated 30.8.2012 and for setting aside the order whereby *ex parte* proceedings were initiated against him. The case of the petitioner was that he had not received the summons qua the pendency of the suit. The Trial Court while dismissing the application moved by the petitioner has held that as per the reports of the Process Servers, petitioner as well as his wife had refused to accept summons. RW-2 Anand Kumar, Process Server had proved his report wherein he had reported that the wife of the petitioner had refused to accept the summons. RW-3 Anil Kumar, Process Server proved his report regarding refusal of receipt of summons by the petitioner. Petitioner was ordered to be summoned by way of *munadi* for 23.2.2012. However, despite service, petitioner failed to appear before the Trial Court.

Thus, in the facts and circumstances of the present case, it was duly proved on record that petitioner as well as his wife had refused to accept the summons. Thereafter service was ordered

to be effected by way of *munadi* but despite that, petitioner had failed to appear before the Trial Court. In these circumstances, the Courts below rightly held that the absence of the petitioner before the Trial Court was deliberate with a view to evade the payment of rent.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

July 27, 2015
Gurpreet