

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 4851 of 2015
Date of Decision: 04.8.2015.**

Haryana Wakf Board

.....Petitioner

Versus

R.D.Parnell and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jai Bhagwan, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 7.4.2015 (Annexure P-3) whereby suit of the plaintiff was dismissed under Order 9 Rule 2 of the Code of Civil Procedure, 1908.

Impugned order dated 7.4.2015 (Annexure P-3) reads as under:-

“Today the main case was fixed for consideration on the application under order 5 Rule 20 C.P.C. for substituted service of defendant no. 2 moved by the applicant-plaintiff through counsel. After careful perusal of case file, it is revealed that inadvertently in the previous zimni order dated 01.04.2015 it was mentioned that application under order 5 Rule 20 CPC for substituted service of defendant no. 2 has been filed by applicant-plaintiff, as

the actual date mentioned in the application 28.11.2014 and affidavit attached in support of application is also of dated 28.11.2014 which was filed on last date of hearing so, the application and affidavit filed on last date of hearing i.e. on 01.04.2015 was wrong dated and today no fresh application has been filed. Perusal of case file also reveals that cost of Rs. 200/- has not been deposited till date which was imposed on 23.02.2015 and various effective opportunities have been availed by ld. Counsel for plaintiff for effecting service up on defendant no. 2 since 29.10.2011. As the plaintiff failed to effect the service up on defendant no. 2 despite availing several effective last opportunities and even cost is also not deposited, accordingly, suit of the plaintiff stands dismissed u/o 9 rule 2 CPC and file be consigned to the Record Room after due compliance.”

Learned counsel for the petitioner has submitted that vide order dated 23.2.2015, the case was adjourned to 1.4.2015 for filing correct address of defendant No. 2. The adjournment was granted subject to payment of ₹ 200/- as costs. Costs could not be deposited as the correct address of respondent No. 2 was not available and on 1.4.2015, an application was moved by the petitioner for substituted service of defendant No.2.

In the present case, petitioner-board has filed the suit for possession of the property in question. A perusal of the interim order dated 23.2.2015, as reproduced on page 17 of the petition, reveals that notice could not be issued to defendant No. 2 for want

of correct address. As requested by the counsel for the petitioner, one more opportunity was granted to the petitioner to file the correct address of defendant No. 2 subject to payment of ₹ 200/- as costs. On 1.4.2015, i.e. the adjourned date, the costs were not paid. However, petitioner moved an application for substituted service of defendant No. 2 and the case was adjourned to 07.4.2015 for consideration on the said application as well as payment of costs. However, petitioner failed to deposit the costs on 07.4.2015. Since the petitioner had failed to deposit the costs, the learned Trial Court rightly ordered the dismissal of the suit.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

August 04, 2015
Gurpreet