

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

CR No.5095 of 2014

Date of decision : 19.11.2015

Bhanwar Lal @ Bhanwar Lal Aggarwal and ors.

...Petitioners

Versus

Shyam Sunder and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Akshay Kumar Goel, Advocate for the petitioners.

Mr. Sudhanshu Makkar, Advocate for respondent Nos.1 to 4.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the orders dated 27.03.2014 & 13.10.2010, whereby appeal & application filed under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 27.11.2007 filed, have been dismissed.

The petitioners-defendant Nos.1 to 4 filed the application Under Order 9 Rule 13 CPC (Annexure P-2) for setting aside the ex parte judgment and decree dated 27.11.2007 on the premise that they were never served at the address of Bhiwani given in the memo of parties/memorandum of the suit. In fact they had shifted to Gujarat and Calcutta and no effort has been made to serve them at the last available address.

Mr. Akshay Kumar Goel, learned counsel appearing on behalf of petitioners submits, that zimni orders of the suit would reveal that plaintiffs were called upon to furnish the correct address but Court, in spite of having not furnished correct address, ordered for publication of petition in the newspapers of that area/ at the address given in the suit. He further submits Ghansham Dass Sharma, Advocate who had allegedly put in appearance through memo of appearance as advocate did not have any authority and in cross-examination, it has surfaced that he had put in appearance on behalf of proforma defendant Nos.5 to 9 and on asking of one Mr. Dinesh Kumar Gupta, Advocate, who was known to proforma defendant Nos.5 to 9 filed his memo of appearance *ibid*. He further submits that suit was for declaration and permanent injunction filed by respondents-plaintiffs that they were tenant and claiming the occupancy rights but Courts below granted declaration of ownership of the suit property. No prejudice would be caused in case petitioner-defendant Nos.1 to 4 are given opportunity to contest the suit. The Court may bind the petitioner time frame for leading the evidence.

Mr. Sudhanshu Makkar, learned counsel appearing on behalf of respondent Nos.1 to 4-plaintiffs submits, that Mr. G.D. Sharma, Advocate had on 10.04.2007 put in appearance on behalf of defendants. The application under Order 9 Rule 13 reveals that the address of defendant Nos.1 to 4 is that of Bhiwani. In case the petitioners had shifted to Gujarat at Surat or Calcutta at Siliguri, the application would have contained the aforementioned address. Mr. Surender Kumar, who had appeared on behalf of petitioner was also Power of Attorney Holder of the proforma defendant

Nos.5 to 9 in essence, there was apparent collusion between defendant Nos.1 to 4 and 5 to 9 and, therefore, personal knowledge which the petitioner had could not be passed on to the power of attorney holder/agent. In support of his contention, he has relied upon ratio decidendi culled out by Hon'ble Supreme Court of India in *Man Kaur (dead) by LRs Vs. Hartar Singh Sangha, 2010(10) SCC 512*.

It is, further submitted that the application was filed after two years from the date of passing of the judgment and decree, without being accompanied with any application seeking condonation of delay and, thus, prays for the dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the zimni orders starting from 16.12.2006 to 25.04.2007:-

*“Present:- Sh. Kalyan Singh, Advocate Proxy Counsel for
Sh. Nitin Aggarwal, Advocate for the plaintiff.
Summons served to defendants received back
unserved for want of their correct address. Now the same
be filed and thereafter they be served for 17.01.2007.*

Sd/-ACJ (SD)

16.12.2006

*Present:- Sh. D.D. Aggarwal, Advocate for the plaintiffs.
Notice served to the defendants through Regd.
A.D. not received back served or unserved. Now the same
be awaited for 05.02.2007.*

Sd ACJ(SD)

17.01.2007

*Present:- Sh. Kalayan Singh, Advocate Proxy Counsel
for*

Sh. D.D. Aggarwal, Advocate for the plaintiffs.

*Notice issued to the defendants No.1 to 4
through registered post have been received unserved with
the report that the premises of the addresses were found
locked. The notice through registered A.D. Already sent to
the remaining defendants not received back either served
or unserved through the same were sent at the correct
address on 23.12.2006. From the above circumstances, I
am satisfied that the service upon the defendants cannot be
effected by ordinary process. So in the substituted service.
Let notice upon all the defendants be now served for
08.03.2007 through publication in the newspaper Dainik
Chetna on depositing necessary charges within seven days.*

ACJ(SD)

05.02.2007

*Present:- Sh. Kalyan Singh, Advocate Proxy Counsel
Sh. Nitin Aggarwal, Advocate for the plaintiff.
Sh. V.S. Chauhan, and Sh. Ganshyam Sharma,
Advocate for defendants.*

*Learned counsel appearing on behalf of
defendants sought adjournment filing written statement
and reply to the application under Order 39 Rule 1 and 2
CPC the same be filed on 21.03.2007 arguments on the
application shall also be heard. However, till then parties
are directed to maintain status-quo with regard to the
possession over the suit property.*

*At this stage, learned counsels for the defendants
had requested for getting the photocopies of defendants
relied upon by the plaintiff. Learned Proxy Counsel is
directed to supply the same to the opposite counsel within
seven days.*

ACJ (SD)

08.03.2007

Present:- None

File taken up today as I shall be on casual leave on 23.03.2007. Hence, the case is adjourned to 10.04.2007 for the same proceedings/parties/counsels be informed accordingly.

ACJ (SD)

20.03.2007

Present:- Sh. Kalayan Singh, Advocate Proxy Counsel for Sh. D.D. Aggarwal, Advocate for the plaintiff.

Sh. V.S. Chauhan, Advocate Proxy Counsel

Sh. G.D. Sharma, Advocate for defendants.

Written statement and reply to the stay application on behalf of defendants not filed. Date requested by the Ld. Proxy counsel for defendants. Now the same be filed on 25.04.2007. Last opportunity granted.

ACJ (SD)

10.04.2007

*Present:- Sh. D.D. Aggarwal, Advocate for the plaintiffs.
None for the defendants.*

The case called out several times. Since morning but none on behalf of the defendants has come present. It is already 2.15 PM waited sufficiently. It appears they are not interested in contesting the suit so they are proceeded against ex parte. Now to come upon 07.06.2007 for PWs. The earlier order of injunction to maintain status-quo with regard to the possession over the suit property by both the parties is extended till the decision of the suit.

ACJ (SD)

25.04.2007”

On perusal of the zimni orders particularly 05.02.2007, it would reveals that registered cover received by the Court was bearing the report that premises of the respondents found locked and the Courts below on the basis of the aforementioned report formed the opinion that petitioner-defendant Nos.1 to 4 could not be served through ordinary process and, therefore, ordered for service through publication in newspaper “Dainik Chetna” on deposit of necessary charges.

In my view, aforementioned order is not sustainable in the eyes of law as it does not conform to the provision of Order 5 of the Code of Civil Procedure. Even the publication had been done at the same address given in the suit property. Though the respondent-plaintiff failed in its duty to provide the address of Surat/Silliguri or correct address but the fact remains that Court ought to have recorded the satisfaction as per provision of Order 5 before ordering for publication and this fact has been proved through the testimony of Ghansham who unequivocally submitted that he filed memo of appearance on asking of Mr. Dinesh Kumar Gupta, Advocate who is relative of proforma defendants No.5 to 9.

It is a matter of record that Ghansham Dass Sharma did not have any authority in writing but power of attorney to appear on behalf of defendant Nos.5 to 9. The statement of Surender Kumar attorney holder who appeared on behalf of petitioner was based upon the zimni orders and the record of the Courts below therefore it was not personal to be extracted in the cross-examination, therefore, ratio decidendi culled out in Man Kaur (Supra) is not applicable. There is another aspect of the matter. The Court

instead of granting declaration for tenancy declared the respondent-plaintiff as owners which is beyond relief as sought.

In my view, no prejudice or harm would be caused to the plaintiff in case ex parte judgment and decree is set aside by putting parties to certain terms and conditions in filing pleading and concluding evidence in a time bound manner and appearance before the trial Court. It is thus directed that the petitioner-defendants shall on appearance file written statement within a period of 15 days. In order to curtail the prolongation of the litigation, the trial Court shall adopt the procedure of admission and denial of documents. After undergoing exercise shall framed issues on the basis of pleadings & on the documents on which the parties are at variance. Thereafter the parties shall be given four four effective opportunities to lead evidence in support of the pleas and shall decide the suit as expeditiously as possible within a period of one year.

Nothing mentioned aforesaid shall be construed an expression on the merit of the case.

In view of what has been observed above, impugned orders are set aside. Revision petition is accordingly allowed. Parties through their counsel are directed to appear before the trial Court on 14.12.2015.

However, this order of mine shall be subject to payment of cost of ₹10,000/- which shall be condition precedent and be paid to the counsel for the respondent-plaintiff in the High Court.

19.11.2015

pawan

**(AMIT RAWAL)
JUDGE**