

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

**CR No.5579 of 2015.**

**Date of Decision: 09.09.2015.**

Anil Kumar

....Petitioner.

VERSUS

Bimla and another

....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. Rajesh Arora, Advocate for the petitioner.

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**SNEH PRASHAR, J.**

This civil revision is directed against the order dated 14.05.2015 passed by learned Civil Judge (Junior Division), Gurgaon, allowing the application under Order 9 Rule 13 of the Code of Civil Procedure (for short, “the Code”) filed by the defendant-respondent No.1 and thereby setting aside the exparte judgment and decree dated 13.09.2012 and exparte order dated 12.08.2009 passed in favour of the petitioner.

As pleaded by the petitioner, he filed a suit for permanent injunction against defendant-respondent No.1 claiming to be in possession of a plot (detail of which is given in Para No.2 of the petition) on the basis

of an agreement of sale dated 26.03.2002 executed in his favour against payment of total sale consideration of Rs.5 lacs to Ram Chander son of Shibani, husband of respondent-defendant No.2 being G.P.A. holder of Tej Singh son of Than Singh, husband of defendant-respondent No.1. He prayed that respondents-defendants be restrained from interfering in his peaceful possession.

Learned counsel for the petitioner submitted that defendant-respondent No.1 was served through publication. A counsel appeared on her behalf and filed his 'Vakalatnama' before the trial Court. Respondent-defendant No.2 also appeared through a counsel and filed his written statement. Subsequently, on 12.08.2009 when the case was fixed for filing of written statement by defendant-respondent No.1, neither she nor respondent-defendant No.2 appeared personally or through counsel and were proceeded against ex parte. The petitioner led his ex parte evidence and considering the same the suit was decreed vide judgment and decree dated 13.09.2012. Subsequently, after more than five months of the judgment and decree, defendant-respondent No.1 filed an application under Order 9 Rule 13 of the Code expressing complete ignorance about the judgment and decree and prayed for setting aside the same. The petitioner contested the application but after taking evidence of the parties, learned trial Court allowed the application vide the impugned order dated 14.05.2015.

Learned counsel asserted that not only the application was barred by limitation, all the pleas raised by defendant-respondent No.1 with regard to her service and appearance of a counsel on her behalf were

completely false. The impugned order of learned trial Court allowing the application is manifestly illegal and erroneous.

There is absolutely no force in the argument of learned counsel for the petitioner. The order of learned trial Court gives a crystal clear view of the mischief played during the proceedings of civil suit filed by the petitioner. For ready reference, her findings are reproduced hereunder:-

*“The applicant/defendant no.1 is asserting that neither any summon nor any publication was ever served to her. In order to substantiate her assertions, the applicant/defendant no.1 produced on record the document Ex. A-5 which is Form CD-I and report of CD Form, wherein it is clearly mentioned that neither any summon nor publication nor any type of report is attached with the main case file No. 606/2007 decided on dated 13.9.2012. The perusal of the main case file also reflects that the summons were not issued to her and a substituted service by publication in a newspaper "Statesmen" was ordered by the court of Sh. Roopam Singh, the then Civil Judge (Jr. Divn.) Gurgaon vide order dated 15.11.2007. The perusal of the file further reflects that no such publication was issued to the applicant/defendant no.1 and the court again ordered for issuance of the publication on dated 13.8.2008. However, on dated 13.8.2008 itself, applicant/defendant no.1 appeared through Sh. K.K.Kathuria, Advocate and the case was adjourned for 27.1.2009 for filing the written statement . On dated 27.1.2009, the presiding officer was on compensatory leave and the matter was adjourned for 6.6.2009 and again for 12.8.2009, on which date, the applicant/defendant no.1 was proceeded exparte vide order dated 12.8.2009. The applicant/defendant no.1 is asserting that she never authorized Sh. Satyawan as her power of*

*attorney to appear before the court on her behalf in the case. The applicant/defendant no.1 is further asserting that the said Satyawar has already been died on dated 26.9.2007, then how he can appear on behalf of her on dated 22.7.2008. In order to substantiate her claim, she produced on record, copy of the Vakalatnama dated 22.7.2008 Ex.A.6 and copy of postmortem report of Satyawar dated 26.9.2007 Ex.A.7. The perusal of the said report Ex.A.7 it is reflected that the said Satyawar son of Sh. Chander Bhan was already died on 26.9.2007. In order to rebut the evidence of the applicant/defendant no.1, nothing substantial was produced or adduced by the plaintiff/respondent. The plaintiff/respondent no.1 neither examined any witness to prove that the defendant No.1/applicant was in notice and knowledge of the present case nor he adduced any document that summons/publication was duly served upon the defendant No.1/applicant. He also failed to prove that the document Ex.A.7 i.e the postmortem report of Satyawar is a forged document and the said Satyawar was alive on dated 22.7.2008, when the said Vakalatnama Ex.A.6 was filed by him on behalf of defendant no.1/applicant. In view of the aforesaid, in the considered opinion of this court, the applicant/defendant no.1 has duly proved on record that summon/publication was never issued to her and she has not authorized anyone to appear on her behalf. The authenticity of the document Ex.A.6 i.e Vakalatnama on behalf of Satyawar, alleged Power of Attorney of the defendant no.1/applicant is doubtful in the present case.”*

It is indeed surprising, as is clear from the above order that no notice either through summons, or publication or through any other substituted mode was served on the defendant-respondent No.1. Without

issuance of any summons, publication of the notice was ordered and even before the publication could be effected, a 'Vakalatnama' of a counsel was filed who had already expired. It was in the said manner that an exparte order against defendant-respondent No.1 was made to be passed. By no stretch of imagination, such an order and the judgment and decree passed consequent to the same, could be left to sustain.

As far as the argument of learned counsel for the petitioner with regard to the application having been filed after expiry of the period of limitation is concerned, Article 123 of the Limitation Act, 1963 postulates that the limitation for setting aside of an exparte order or a judgment in a case when the summons or notice were not duly served, starts from the date of knowledge of the said decree. In the case in hand, the period of limitation commenced from the date, the exparte judgment and decree came to the knowledge of defendant-respondent No.1 which she stated during her deposition as just 10-12 days prior to the filing of the application.

Thus, finding no illegality or perversity in the order of learned trial Court calling for intervention, the petition is hereby dismissed.

**(SNEH PRASHAR)**  
**JUDGE**

**09.09.2015.**  
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