

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.602 of 2012

Date of Decision.10.03.2015

Harmohan Kaur

.....Petitioner

Versus

M/s Mohinder Singh Hans Raj Cimmission Agents and others

.....Respondents

Present: Ms. Shamita Kaushik, Advocate for
Mr. Saurav Khurana, Advocate
for the petitioner.

None for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. The revision petition is against the order passed by the Courts below declining to set aside the ex parte decree which was passed against the petitioner. The suit was for recovery of ₹ 1,55,078/- and the decree had been passed on 31.01.2009 but the application for setting aside the decree was passed some time in 2011 urging a contention that the notice was not served and the summons alleged to have been received were not received by the respective applicants-defendants. Before the trial Court, it was contended that the endorsement on summons to the 1st defendant as received and endorsement of refusal by the 2nd defendant were not proved and the bailiff had not been examined. For the decree holder, the Court took a defence that the 2nd defendant was the daughter-in-law of the 1st

defendant and both of them were actually summoned through the Court and while the 1st defendant had actually received, the 2nd defendant had refused to accept the notice and affixation had been made. The Court was prepared to rely on the endorsement of the bailiff and took the service as complete. The Appellate Court affirmed the same.

2. Where the receipt of summons is denied by person but the Court records indicate that there had been a service, there must be an attempt on the part of the Court to elicit the evidence through the bailiff to ascertain whether the service was actually effected only on the parties and whether the endorsement of service were properly attested and identity of the persons had been established. There cannot be a matter of presumption if a denial of service was made when the plaintiff is bound to secure appropriate evidence as regards the actual service. If the plaintiff had omitted to do so, the Court was still not without power to secure the evidence of the bailiff and secure appropriate evidence. The orders passed by the Courts below failing to note that burden of proof of service was only on the plaintiff and that had not been properly discharged even when the petitioner was taking a plea that there was no service of summons. I set aside the orders passed by the Courts below.

3. Considering the fact that the suit is for recovery of money and the suit was instituted in May, 2009 and the ex parte decree was passed in 2009, the ex parte decree which is passed is ordered to be set aside on condition that the petitioner deposits 25% of the decree amount within a period of 8 weeks from the date of receipt of copy of this order failing which the order passed will stand restored. The right

of contest will be made possible to the petitioner only if the condition for deposit is complied with in the manner directed.

4. The orders passed by the Courts below are set aside and the revision petition is allowed but subject to the condition regarding the deposit in the manner referred to above.

(K. KANNAN)
JUDGE

March 10, 2015
Pankaj*