

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

CR No.6402 of 2015

Date of decision: 07.10.2015

Joginder Singh

...Petitioner

versus

Kulwinder Singh (deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.S. Dhillon, Advocate,
for the petitioner.

RITU BAHRI, J.

Challenge in this petition is to the order dated 28.04.2015 (Annexure P-3) passed by the Civil Judge, Senior Division, NRI Cases, Jalandhar, whereby suit against LRs of defendant No.1 has been dismissed under Order 9 Rule 2 CPC.

Vide order dated 16.04.2014, legal representatives of defendant No.1 were impleaded as party to the suit. Thereafter, the plaintiff-petitioner was granted opportunity to serve the legal representatives of defendant No.1 on 27.08.2014. However, the plaintiff could not get the service effected for successive five dates. Ultimately, vide impugned order, the suit has been dismissed against the LRs of defendant No.1 under Order 9 Rule 2 CPC.

Order 9 Rule 2 CPC is reproduced as under:-

“2. Dismissal of suit where summons not served in consequence of plaintiffs' failure to pay costs.- Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the Court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 Order VII, the Court may make an order that the suit be

dismissed.”

The present is not the case where the plaintiff-petitioner had failed to pay the Court fee or postal charges/process charges or there was a failure on his part to give copies of plaint.

In the given circumstances of the case, to impart complete justice to the parties and also to avoid deprivation of full opportunity to the petitioner, this Court deems it appropriate to provide one last opportunity to the plaintiff-petitioner to effect service upon the LR's of defendant No.1.

In view of the above, the impugned order dated 28.04.2015 (Annexure P-3) is set aside and one effective opportunity is granted to plaintiff-petitioner to get the service effected upon LR's of defendant No.1, subject to costs of Rs.3000/- to be deposited with the District Legal Services Authority, Jalandhar.

Allowed accordingly.

(RITU BAHRI)
JUDGE

07.10.2015
ajp