

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

C.R. No. 6708 of 2015

Date of decision:- 26.11.2015

Jitender

...Petitioners

Versus

Anup Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.S. Malik, Advocate
for the petitioners

RITU BAHRI J.(Oral)

Petitioner has filed the instant revision petition under Article 227 of the Constitution of India assailing order dated 01.09.2015 passed by the learned Addl. Civil Judge (Sr. Divn.), Sonapat whereby the application of the respondent for permission to allow the applicants to defend the case on behalf of Anup Singh, was allowed.

The petitioner filed a suit for specific performance of the contract with consequential relief of permanent injunction against the defendant Anup Singh on 30.01.2009, who did not appear before the learned Civil Judge (Sr. Divn.) Sonapat and learned Civil Judge has proceeded ex-parte against the defendant namely Anup Singh on 18.08.2010. Thereafter, brother of Anup filed application for setting aside ex parte order and the present petitioner filed reply to the application. On 07.08.2014, learned counsel for the applicant stated that he wants to file LR's application

on behalf of defendant as he has been missing. His request was allowed and the case was adjourned to 12.08.2014 by learned Civil Judge (Sr. Divn.) Sonapat. Thereafter, brother of the defendant filed an application for permission to allow the applicants to defend the case on behalf of Anup Singh who is not traceable for the last 06 years and petitioner filed his reply to the said application. The said application was allowed vide impugned order dated 01.09.2015 on the ground that Anup Singh is missing from the village since 06.03.2009 and is not traceable despite best efforts by the applicants and other relatives. Perusal of the summons issued to defendant Anup Singh shows that all the summons have been received back unexecuted with a report that he is not at home. Ultimately, Anup Singh was ordered to be summoned through Munadi. These facts were not disputed by the petitioner. The application was opposed on the ground that without declaring Anup Singh dead by the competent court, the application is not maintainable.

Learned counsel for the petitioner contends that the learned Civil Judge while passing the impugned order has ignored the proper procedure for allowing the aforesaid application. No person can be impleaded as party in the civil suit against missing person who has not been declared dead. Reference has been made to Section 107 of the Evidence Act.

Heard learned counsel for the petitioner.

The learned trial Court has rightly allowed the application of the applicant by relying upon a judgment of this Court in a case of **Kulwinder**

Kaur v. Raghbir Singh, 1998(4) RCR (Civil) 381 wherein in a suit for specific performance of an agreement to sell, whereabouts of defendant-executant of agreement was not known but not since more than 07 years. It was held that though he cannot be presumed to be dead, but in his absence, his wife and children were held to be necessary parties.

In the present case as well, the defendant-Anup Singh was not traceable for the last 06 years despite the efforts made by the applicants as well as by police, thus the application of the applicants have rightly been allowed.

No ground is made out to interfere in order dated 01.09.2015 passed by the learned Addl. Civil Judge (Sr. Divn.), Sonapat

The petition is dismissed accordingly.

November 26, 2015
G Arora

(***RITU BAHRI***)
JUDGE