

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

CR No.6486 of 2014

Date of decision : 01.10.2015

Indal Kumar

...Petitioner

Versus

Gaurav Kumar Grover

...Respondent

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. Manish Kumar Singla, Advocate for the petitioner.

Mr. Vaibhav Sehgal, Advocate for
Mr. Sunny Saggar, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the impugned order dated 09.09.2014, whereby application filed under Order 37 Rule 4 of Code of Civil Procedure, has been dismissed.

Mr. Manish Kumar Singla, learned counsel appearing on behalf of petitioner-Judgment Debtor-defendant submits that Civil Suit bearing No.116 under Order 37 Rule 2 was instituted on 29.03.2011. He has referred to the zimni orders passed on 16.04.2011, 29.04.2011 and 01.06.2011 to demonstrate that on receipt of refusal report, the trial Court ordered to effect service through munadi process and after effecting the

service through munadi process, ex parte judgment and decree has been passed. Application for setting aside the ex parte judgment and decree as per provision of Order 37 Rule 4 read with Section 151 of CPC was moved on 15.11.2012.

He has further shown the copy of the report of the Process Server dated 26.04.2011, which is alleged to have been witnessed by one Banwari Lal, Chowkidar and report dated 23.05.2011 of effecting the munadi service. He further submits that parties were at variance that learned trial Court had framed issues and from the cross-examination of the Process Server, with regard to the effecting of service on summons and munadi, it has surfaced that Process Server did not know the witnesses, much less, even Tarsem Singh, admitted that he had never visited the house of the petitioner-defendant and submits that Court below has taken into consideration only one solitary reason in declining the application. Petitioner has not been able to prove on record whether the Indal Kumar and Indraj is one and the same person, therefore, valuable right of defence has been taken away and prays for setting aside the order.

Mr. Vaibhav Sehgal, learned counsel appearing on behalf of respondent submits that there is no explanation given in moving the application in December 2012. It is only Executing Court who issued the conditional warrant of arrest and application in hand was moved.

He submits that main thrust in the application was that he was never served with regard to the pendency of the suit and his name on summons had been written as Indraj whereas he is Indal Kumar.

I have heard learned counsel for parties and appraised the paper

book.

Tarsem Kumar, Process Server who effected the munadi service, in cross-examination, stated that he had never visited the house of the defendant. In case, such statement is to be believed, I am of the view that no effective munadi was ever caused. Even on the cross-examination of Satish Kumar RW2, it is revealed that he has not mentioned in the report that he had effected the service of summons upon the petitioner who is alleged to have refused to receive the same, neither he had affixed the summons on the outer wall of the house.

It is a matter of record that in pursuance with the notice of motion, issued by this Court, the petitioner vide receipt No.1467 dated 13.10.2014 has deposited principle sum of ₹3,00,000/- in this Court. No doubt that legislature prescribed the time line for deciding the summary suit filed on the basis of pronote, cheque etc.. Defendant has to apply within 10 days of receipt of the summons of judgment & for leave to defend and the Court is required to adjudicate the said application on the basis of the averments made in the application, duly supported by affidavit.

It is yet to be determined actually whether the defendant had to pay the money to the plaintiff or not. Be that as it may. The evidence of the Process Server, in my view, leaves no manner of doubt, that service of summons was effected upon petitioner. Even the procedure as prescribed under Order 5 Rule 17, has not been followed. The Process Server has failed to place on record the report of refusal.

Keeping in view the aforementioned observation, in my view impugned order declining the application filed under Order 37 Rule 4 of

Code of Civil Procedure is not sustainable and is hereby set aside.

Revision petition stands allowed with a following direction:-

a) Within 10 days from the receipt of certified copy of the order, plaintiff shall serve upon defendant the copy of summons of judgment and thereafter the petitioner-defendant shall apply for leave to defend.

On compliance of the aforementioned procedure, the trial Court shall decide the application seeking leave to defend as expeditiously as possible within a period of three months thereafter. The amount so deposited in this Court is ordered to be remitted to the concerned Court i.e. in the account of trial Court i.e. Civil Judge (Junior Division)-cum-Judicial Magistrate, Ist Class, Tohana, District Fatehabad.

However, since the respondent-plaintiff has been deprived of seeking execution of the decree, I deem it appropriate to impose cost of ₹25,000/- to be paid to the counsel for the respondent-plaintiff in the High Court.

01.10.2015

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**(AMIT RAWAL)
JUDGE**