

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7407 of 2011 (O&M)
Date of decision: 21.9.2015

Prem Nath

..... Petitioner

Versus

Kewal Krishan Mahandru and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

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?

Present : Mr. N.C.Sahni, Advocate for the petitioner.

Mr. Raj Kaushik, Advocate for respondent No.1.

ARUN PALLI, J. (Oral)

Vide order dated 11.11.2011, rendered by Civil Judge (Jr. Divn.), Jalandhar, application moved by the petitioner-defendant No.2, under Order 9 Rule 7 of the Code of Civil Procedure for setting aside the *ex parte* proceedings, has since been dismissed.

Concededly, respondent No.1 i.e. Kewal Krishan Mahandru had filed the suit on 22.03.2006 and the notice was issued to the petitioner-defendant No.2. The report of service in this regard dated 8.4.2006, reads as thus:-

“It is respectfully submitted that today I went to

the spot to serve summons to Prem Nath S/o Sh. Kedar Nath, Gali No.13, Avtar Nagar, Backside BOI Jalandhar and searched for service, but he was not found at the spot. Two boys came out but they refused to receive service and refused to disclose their name and refused to give in writing. Report is presented”.

The aforesaid report was construed as report of refusal and the petitioner-defendant No.2 was thus ordered to be served through substituted service i.e. munadi for 7.9.2006. *Ex facie*, as per the report submitted by the Process Server dated 8.4.2006, petitioner-defendant No.2 was not found present at the spot and none received or refused to receive the summons on behalf of the petitioner, either. Two boys, who were purported to be present and refused service, their names and particulars were never ascertained. Report was not attested or endorsed by any witness in the locality either. That being so, petitioner-defendant No.2 could not be said to have refused service. In any case, the trial Court ordered substituted service of petitioner-defendant No.2 through Munadi, without first adhering to the provisions of Order V Rule XVII of the Code of Civil Procedure. Concededly, the petitioner-defendant No.2 was never served by affixation of summons as the provision postulates. Apparently, petitioner-defendant No.2 was wrongly proceeded against *ex parte*. That being so, service through publication in the newspaper would be of no consequence. As initially, on 1.12.2011 this Court had stayed the further proceedings and vide order dated 15.01.2014, the matter was allowed to be proceeded with but the passing of the final order was stayed, meaning thereby the

proceedings are still pending at the trial stage itself. And even if it is assumed that the petitioner has been remiss in pursuing his cause, the fact remains that if he is not allowed to join the proceedings and contest the suit, he shall suffer an irreparable loss that might result into a miscarriage of justice.

Learned counsel for respondent No.1 could not point out as to how the report of Process Server dated 8.4.2006 Annexure P-2 could be construed as report of refusal of service by petitioner-defendant No.2. He also could not point out as to how the trial Court could order substituted service by Munadi without first exhausting the provision of Order V Rule XVII of the Code of Civil Procedure either. However, learned counsel for respondent No.1 further submits that since the suit is pending for almost a decade, the trial Court be directed to decide the suit within a specified time.

That being so, the petition is accepted and the order being assailed dated 11.11.2011, as also the order dated 22.03.2007, vide which the petitioner-defendant No.2 was proceeded against *ex parte* are set aside. In the wake of the position as set out above, trial Court is directed to decide the suit within one year from receipt of certified copy of the order.

September 21, 2015

Manoj Bhutani

(ARUN PALLI)
JUDGE