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

Civil Revision No. 7858 of 2015 (O&M)

Date of decision: November 26, 2015

Malika Arora and ors.

-Petitioners

Versus

Sahib Singh and ors.

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Amanpreet Kaur Sabharwal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

{1}. Learned counsel for the petitioner *inter alia* contends that defendant No.2 is son of defendant No.1 and defendant No.3 is brother of defendant No.2. Defendant No.2 is Incharge of the suit land qua which suit for possession has been filed by the plaintiff.

{2}. Learned counsel for the petitioner relies upon Order 5 Rule 14 CPC to contend that if defendants No.1 and 3 have no agent empowered to accept the service, then the same can be made on a person who is Incharge of the property in question.

{3}. Apparently, defendant No.2 is the Incharge of the property, therefore, defendants No.1 and 3 can be served through defendant No.2.

{4}. Learned counsel for the petitioner additionally submits that defendant No.2 is the adult male member of the family of the defendants No.1 and 3, therefore, in terms of Order 5 Rule 15 CPC service upon defendant No.2 can be taken to be a valid service.

{5}. Learned counsel relies upon **Charanjit Singh Mann vs. Neelam Mann 2006(2) R.C.R. (Civil) 497** wherein, Letters Patent Bench of this Court while dealing with Order 5 Rule 15 CPC held as under:

“22. There can be no quarrel that service can be made under Order 5 Rule 15 Civil Procedure Code on an adult member (male or female) residing with a party to the lis subject to, however, fulfillment of two conditions, namely (i) the party upon which service is to be effected resides at that address; and (ii) there is no likelihood of his being found within a reasonable time. The expression “reasonable time” shall vary from case to case. There can, however, be no doubt that before effecting service on an adult member of a defendant's family, there has to be satisfaction regarding likelihood of his non-availability at his residence within a reasonable time.

23. Testing the yardstick of “within reasonable time” in the facts and circumstances of the

present case, it is not defined that:

(i) the appellant is a permanent resident of Ambala Cantt. and summons were sent to him on that address only; (ii) the appellant was not found at his residence and his father informed the process server that the appellant had gone abroad after re-marrying; (iii) the appellant's father did not disclose as to how soon the appellant would come back from abroad; and (iv) the appellant's father did not commit that he will definitely inform the appellant regarding filing of the appeal or the interim order passed by the Court though he assured in this regard. In these peculiar facts and circumstances and having regard to the nature of litigation, it can be safely inferred that the summons could not have been served upon the appellant personally within a reasonable time, therefore, service of notice upon the appellant's father, who admittedly received the summons, squarely falls within the safeguards of Rule 15 of Order 5 Civil Procedure Code and has to be treated as a valid service upon the appellant."

{6}. As per evidence on record, defendants No.1 and 3 are statedly residents of America and cannot be served by means of ordinary process of the Court. In view of peculiar facts and circumstances of this case, this Court is satisfied that issuance of notice of motion would bring the parties again to the same fore, therefore, at this stage, defendant No.2 can be asked to represent defendants No.1 and 3 in terms of order 5

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Rule 14 CPC, without prejudice to civil rights of defendants

No.1 and 3.

Disposed of.

(RAJ MOHAN SINGH)
JUDGE

November 26, 2015
prince