

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1539 of 2011 (O&M)

Date of Decision.05.02.2016

Ramesh Kumar

.....Petitioner

Vs.

Leela Ram

.....Respondent

Present: Mr. G.S. Bhatia, Advocate
for the petitioner.

Mr. Rajan Bansal, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The suit for specific performance was decreed ex parte on 27.05.2009. The defendant filed an application for setting aside the decree within a period of 30 days contending that he had not served with notice of the suit. The alleged service of summon on 09.09.2008 was contested by the defendant. Process server was examined to say that he had actually effected the service and it was attested by Chowkidar. Chowkidar was also examined and he said that the defendant was not served in his presence. Process server who could not have known the defendant already can only rely upon a person who identified him. The person who could have identified the defendant was Chowkidar and if his evidence was that he did not identify the defendant and service was not effected in his presence, the Court must have seen that there was no valid service. The Court has also observed that the petition is barred by limitation taking the date when he was set ex parte as the date of commencement for the period of

limitation. It is erroneous. If the person is set ex parte but decree is passed only subsequently, the starting point of limitation is only the date of decree and not the order when he was set ex parte. On both grounds, the ex parte decree is bound to be set aside.

2. It is a suit for specific performance and under the terms of the agreement, the defendant was said to have received ₹4 lacs although the defendant is denying the same. In order to put the scales even and to make possible a trial and test the bona fides, the defendant is directed to deposit ₹4 lacs in Court to the credit of the case which shall not be permitted to be withdrawn by the plaintiff. At the option of the parties, the said amount may be deposited with a nationalized bank yielding interest. The ultimate manner of disposal of ₹4 lacs with interest, if any, will abide by the adjudication rendered by the Court after full-fledged trial. The counsel for the respondent states that a sale deed has been executed pursuant to ex parte decree. The petitioner shall also deposit 50% of the amount of the value of stamps as well as registration expenses that the document evidences. This will constitute the costs of suit, along with other components of costs and will also abide by the final direction of costs. The amounts shall be deposited within a period of four weeks from the date of receipt of copy of this order. If the amounts are not paid, the order already passed will stand restored and the petitioner will not have a right of contest.

3. The order already passed is set aside and the revision petition is allowed but subject to the observations made above.

(K. KANNAN)
JUDGE

February 05, 2016

Pankaj*