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

CR-1258-2013

Date of decision : 30.08.2016

Buta Singh

... Petitioner

Versus

Iqbal Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. K.P.S. Virk, Advocate
for the respondent.

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?

AMIT RAWAL, J. (ORAL)

The petitioner-defendant is aggrieved of the dismissal of the application under Order 9 Rule 13 of the Code of Civil Procedure and as well as the appeal.

Mr. Arihant Jain, learned counsel for the petitioner-defendant submits that the suit for seeking specific performance of the agreement to sell was filed on 23.02.2005. Notice for the first date was for 04.03.2005. The alleged service was effected upon Darshan Singh-brother, who is not the family member. The Court below did not find the service satisfactorily and ordered for *Munadi* for 22.03.2005 and accordingly, the petitioner-defendant was proceeded *ex parte* which is resulted into *ex parte* judgment dated 22.02.2007. The petitioner-defendant acquired the knowledge of *ex*

parte judgment and decree through his brother i.e. in the execution proceeding and accordingly, filed the application on 26.07.2007, whereas the judgment and decree is dated 22.02.2007. The respondent-plaintiff have failed to place on record the evidence with regard the deposit of the *Munadi* charges, much less, person who had effected the *Munadi* nor the Village Chowkidar in whose presence the *Munadi* was effected, thus, there is no compliance of the provisions of Order 5 Rule 20 CPC, thus, urges this Court for setting aside the *ex parte* judgment and decree subject to the terms and conditions which this Court may impose.

Mr. K.P.S. Virk, learned counsel for the respondent-plaintiff submits that for the first date, the service was effected through two modes, one through ordinary summons which were effected through Darshan Singh and another by registered post and the registered envelop returned with the report of refusal. It was sufficient for the Court below to proceed *ex parte*, yet the Court below ordered for *Munadi*. In fact, the petitioner-defendant was aware of the *ex parte* proceedings and intentionally delayed the matter with an intention to move an application to thwart the rightful claim of the respondent-plaintiff, thus, urges this Court for affirming the findings under challenge by imposing a heavy cost.

I have heard the learned counsel for the parties and appraised the paper book.

Shorn of the facts as noticed above, the fact remains that there was a report of refusal, yet the Court below ordered for effecting the service through *Munadi*. Neither the Village Chowkidar nor a person who had effected the *Munadi* had been examined. The petitioner-defendant has been proceeded *ex parte* on the basis of the report which, in my view, ought not

to have been, the Court below at the best ought to have ordered for effecting the service through publication. Service upon the adult member of the family i.e. Darshan Singh-brother has been effected, but he is not the member of the family.

I am of the view that the petitioner-defendant should be granted an opportunity to place his defence and accordingly, the *ex parte* judgment and decree of the trial Court is hereby set aside subject to the payment of ₹ 60,000/- (₹ 50,000/- as cost + ₹ 10,000/- as litigation expenses). The same shall be paid to the learned counsel for the respondent-plaintiff in the High Court. However, the petitioner-defendant shall file the written statement within 15 days from the date of the receipt of the certified copy of the order and thereafter, replication within another one week. The trial Court shall frame the issues and afford 3-3 effective opportunities to the parties and conclude the trial as expeditiously as possible preferably within a period of 10 months. The parties shall be at liberty to take the assistance of the Court in summoning the witnesses.

It is made clear that the cost shall be condition precedent.

With the aforesaid observations, the revision petition is allowed in the aforementioned terms.

30.08.2016
yogesh

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No