

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

CR No.1415 of 2015
Date of decision : 27.07.2016

Col. Jagjit Singh (deceased) through his LR

...Petitioner

Versus

Maj. Apjit Singh (Retd.) and others

...Respondents

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: Ms. Rupinder K. Thind, Advocate for the petitioner.

Mr. R.S. Bains, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The petitioners are none-else but the legal representatives of Jagjit Singh who was arrayed as defendant in suit for mandatory injunction and possession, filed in the year 2001.

It is conceded position on record that Jagjit Singh was proceeded ex parte in the year 2001 and ex parte judgment and decree vis-a-vis the possession came to be passed on 13.05.2005.

Ms. Rupinder K. Thind, learned counsel appearing on behalf of petitioner submits that Jagjit Singh expired on 28.10.2005. During that process, petitioner acquired about the ex parte judgment and decree and

accordingly filed application under Order 9 Rule 13 of the Code of Civil Procedure on 03.12.2005 with promptitude. The trial Court framed issues and in support of the aforementioned issues, led the evidence and even moved an application for comparison of the signatures on the report of the Process Server as the summons did not contain exact and real signatures of Jagjit Singh. Jagjit Singh was not in India at that relevant point of time but non-resident of India. All these factors have been brought on record but the Courts below did not ponder upon the same and dismissed the application and as well as the application seeking appointment of expert vide order dated 22.08.2008. The main order and as well as order dated 22.08.2008 were challenged by invoking the provision of Order 43 Rule 1-A but the lower Appellate Court has also not assigned any reasons vis-a-vis order declining the assistance of the Handwriting Expert, thus, the appellate Court has abdicated in its duty in not deciding the aforementioned controversy, therefore, the matter is liable to be remanded back. She further submits that with naked eye, the signature on the copy of the passport and as well as on the summons if compared. Court can take cognizance in deciding the appeal and application and thus, urges this Court for setting aside the order under challenge.

Mr. R.S. Bains, learned counsel appearing on behalf of respondent submits that the petitioners have miserably failed to discharge the onus vis-a-vis the contents of application under Order 9 Rule 13. Umpteen number of opportunities have been taken but failed to lead the evidence. This fact has been noticed in the order dated 22.08.2008 declining the assistance of the Handwriting Expert. He further submits that faint

attempt has been made in grounds of appeal and in fact there is no pleading in this regard or any challenge and thus there is no compliance of provision of Order 41 Rule 3-A of Code of Civil Procedure.

He further submits that application is lacking material with regard to proposed defence they intend to take up in the written statement for contesting the suit. In the absence of the same, it would be totally farcical exercise in setting aside the ex parte proceedings and order for de-novo trial.

I have heard learned counsel for the parties and appraised the paper book and of the view that lower Appellate Court has failed to assign any reasons with regard to the grounds having taken i.e. erroneously declining the reasoning assigned in relief of taking assistance of the expert, in essence, order dated 22.08.2008 was assailed in grounds of appeal. It is a fit case where matter is required to be remanded back to the lower Appellate Court to assign reasons whether the application was based upon justifiable reason or order under challenge could have been upheld or otherwise. Since the petitioner had taken almost more than 11 years in this process, I deem it appropriate to impose a cost of ₹1,00,000/- to be given to the counsel for the respondent in the High Court.

Impugned order passed by the lower Appellate Court is set aside. Matter is remanded back to the lower Appellate Court to decide the controversy as indicated above preferably within a period of four months from the date of receipt of certified copy of the order.

Revision petition stands disposed of in the aforementioned terms.

It is made clear that cost shall be condition precedent before the lower Appellate Court decide the appeal.

27.07.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned: Yes

Whether reportable:- Yes/No