

In the High Court of Punjab and Haryana at Chandigarh

PARAMJIT KAUR SAINI
2016.03.10 11:58
I attest to the accuracy and
authenticity of this document

Civil Revision No. 3191 of 2014
Date of Decision: 29.2.2016

Ram Kumar

---Petitioner

versus

Satbir and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Kunal Dawar, Advocate
for the petitioner

Mr. Sanjay Vij, advocate
for respondents No. 1 to 3

Mr. Rajesh Arora, advocate
for respondent No. 4

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition has been directed against order dated 12.3.2014 passed by the Civil Judge (Senior Division), Gurgaon whereby the application filed by the petitioner for setting side the order dated 13.10.2005 initiating ex parte proceedings against the petitioner, has been dismissed.

Counsel for the petitioner would contend that ex parte proceedings have been initiated against the petitioner on the basis of a report dated 5.10.2005 made by a serving official of the court in regard to refusal and affixation of summons at the given address. It is further argued

that the said report has not been attested by any person from the locality when otherwise the serving official of the Court would not be knowing the petitioner personally. Another submissions made by counsel is that though the ex parte proceedings were initiated in the year 2005 but till date no evidence has been adduced by the respondents/plaintiffs, therefore, no prejudice would be caused to the contesting respondents in case the petitioner is allowed to join the proceedings from the stage of ex parte against him and the petitioner undertakes to file the written statement on the date to be fixed by the trial court for the purpose.

Counsel for the respondents, on the contrary, has supported the impugned order with the submissions that the instant application was filed by the petitioner in the year 2013, therefore, he, at best, can be allowed to join proceedings at this stage. It is further submitted that ex parte proceedings were not initiated on the report of refusal and affixation rather another process was issued by the court for service of the petitioner through affixation and munadi and thereafter ex parte proceedings have been ordered against the petitioner.

I have heard counsel for the parties and perused the records.

Be that as it may, it is an admitted position of the case that personal service was effected upon the petitioner. After framing of issues in the case, none of the witnesses has been examined till date. There is no material on record suggestive of the fact that the petitioner has gained in any manner whatever by failing to join the proceedings at an appropriate stage

when otherwise cost is a panacea for delay attributable to the petitioner. Keeping in view the principles of natural justice coupled with the facts and circumstances of the present case, I am of the considered opinion that the petitioner is entitled to file the written statement and thereafter to contest the proceedings by getting the ex parte proceedings set aside.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the petitioner is permitted to join the proceedings from the stage, he was proceeded against ex parte but subject to the condition that he would get only one opportunity to file the written statement subject to deposit of Rs. 10,000/- out of which an amount of Rs. 5000/- shall be payable to the contesting respondent(s) and the remaining amount of Rs. 5000/- shall be deposited with the Legal Services Authority, Gurgaon. The contesting respondent(s) may file response to written statement, if so desired.

(Rekha Mittal)
Judge

29.2.2016
PARAMJIT