

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.33 of 2014

Date of Decision: February 09, 2016

Food Corporation of India, Bhatinda

...Petitioner

Versus

M/s Swastik Traders, Alipur Road, Patiala & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.K.K.Gupta, Advocate,
for the petitioner.

Mr.Akshay Jindal, Advocate,
for respondent No.3.

AMIT RAWAL, J. (Oral)

The petitioner-plaintiff is aggrieved of the order dated 26.10.2013 (Annexure P-3), whereby the application filed on behalf of the respondent-defendants for setting-aside of the ex-parte judgment and decree dated 19.12.1991, has been allowed.

Mr.K.K.Gupta, learned counsel appearing on behalf of the petitioner-plaintiff submits that the application was filed beyond the period of limitation and as per Article 123 of the Limitation Act, application has to be filed within 30 days from the date of the knowledge. The date of knowledge would be 30.5.2003, whereas the application in hand has been filed on 13.3.2004. This fact has not been noticed by the Court. The respondents have not been able to prove that the firm in the year 1987 was

not there and shifted to some other place. In the absence of any address, the address available with the petitioner-plaintiff was given in the suit and accordingly the defendants were proceeded ex-parte. No witness has been examined to show that the firm is not existing at Alipur Road, Patiala. In the absence of the same, it cannot be said that the service on the firm or partners was not effected. In fact, the defendants were having the knowledge of the ex-parte judgment and decree in the month of February, 2004. Application has been filed on 13.3.2004, i.e., beyond 30 days.

Mr.Akshay Jindal, learned counsel appearing on behalf of respondent No.3 submits that there is no illegality and perversity in the impugned order. The order is based upon appreciation of the evidence brought on record, which shows that the substituted service by way of publication was effected on the old address of the firm and, thus, there was no satisfaction that the firm had actually been served in Civil Suit No.746 dated 23.12.1987 and, thus, prays for dismissal of the revision petition.

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

It is a matter of record that the plaintiff had arrayed the respondents at the old address inspite of the fact that they have left Patiala in the year 1987. The respondent-defendants had put in appearance and stated that they were residing at H.No.1616, Sector 13, Kurukshetra (Haryana) and no summons were sent. Various documents, i.e., certificate Ex.AW1/2 regarding provisional registration of small scale industrial unit in the name of M/s Hind Foam Industries, Pipli Ladwa Road, Mathana, original pass book of saving bank account with State Bank of India, Thanesar branch for the year 1987 (Ex.AW1/3) as well as the sale deed for

purchase of plot measuring 12 biswas on 30/31.7.1987 have been produced on record to show their address. Various other documents, i.e., school leaving certificates, original pass book of the wife, voter list, original income tax assessment order and endorsed copy of allotment of special category to industrial unit have been produced to show the change of the address, whereas report by the Process Server was that the defendants have refused the service. Once the defendants were not residing at the given address, how can summons be refused. It appears that the report was manipulated one. The trial Court, after examining the evidence in extenso, found that there was no ground made out for setting-aside the ex-parte judgment and decree. Moreover, order cannot be said to be without jurisdiction.

There is no merit in the revision petition. The same is accordingly dismissed.

February 09, 2016
ramesh

(AMIT RAWAL)
JUDGE