

**CR-6407-2011**

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

**CR-6407-2011**

**Date of Decision: 17.02.2016**

Deepak Mittal

... Petitioner(s)

Versus

Bhagwan Dayal @ Bhagwat Dayal and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH  
DHALIWAL**

- 1) Whether Reporters of the 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. Rajinder Goyal, Advocate,  
for the petitioner.

Mr. Yashdeep Nain, Advocate for  
Mr. Kuldeep Tiwari, Advocate,  
for respondent Nos.2 and 4 to 6.

**Paramjeet Singh Dhaliwal, J.**

Instant civil revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 07.06.2011 (Annexure P-6) passed by learned Additional Civil Judge (Sr. Divn.), Pehowa whereby *ex parte* judgment and decree dated 19.07.2008 has been set aside.

Brief facts of the case are to the effect that the petitioner-plaintiff filed a suit against the respondents-defendants and the same has been *ex parte* decided by the Court on 19.07.2008. Thereafter,

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respondent No.1 and respondent Nos.2 to 7 filed separate applications under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 19.07.2008 on the ground that they were never served through any mode of process. No *munadi* or affixation was effected with regard to service of notice. If there was any kind of report on the file, the same was in collusion with the petitioner herein i.e. plaintiff and process-server. It was also averred that the respondents came to know about the *ex parte* judgment and decree only on the date when they received the summons in execution petition filed by the plaintiff. Upon notice, the petitioner resisted the application and filed reply taking various preliminary objections. On merits, it was pleaded that the summonses were duly issued to the respondents but they deliberately avoided the same. Thereafter, learned Addl. Civil Judge (Sr. Divn.), Pehowa ordered for service of the respondents through publication vide order dated 17.07.2003 and when they failed to appear before the Court, they were proceeded against *ex parte*.

On the basis of pleadings of parties, following issues were framed by the trial Court:

- “1. *Whether the ex parte judgment and decree dated 19.07.2008 passed in Civil Suit No232/2002 is liable to be set aside on the grounds mentioned in the applications?*
2. *Whether the applications are time barred? OPR*
3. *Relief.”*

The trial Court after considering the evidence led by the

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parties, allowed the application under Order 9 Rule 13 CPC and ultimately set aside the *ex parte* judgment and decree dated 19.07.2008.

Hence, this revision.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that while passing the impugned order, the trial Court erred in law and misread the evidence led by the parties. Respondent-Jai Parkash was duly served for appearance on 17.03.2003, who is the real brother of respondent Nos.1 and 2, as such they were aware of pendency of civil suit. Even respondent No.2 refused to receive the summon and summons sent to respondent No.1 was received back unserved. In such circumstances, the trial Court rightly proceeded to serve the unserved respondents by way of publication. However, in spite of service, respondents did not choose to appear and ultimately they were proceeded against *ex parte* vide order dated 18.09.2003. In execution petition, respondent Nos.1 and 8 were represented through their counsel on 05.02.2009 and respondent No.2 on 23.03.2009, however, application under Order 9 Rule 13 CPC was filed on 15.06.2009. As such, application under Order 9 Rule 13 CPC is time barred. Moreover, the respondents failed to prove the date as to when they came to know with regarding to passing of the *ex parte* judgment and decree.

Per contra, learned counsel for the respondents has

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vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order.

I have considered the rival contentions of learned counsel for the parties.

The notice was ordered to be issued to respondent-Jai Narayan on 22.05.2003 for 17.07.2003 and the same was received back with the report of refusal and notice issued to respondent-Bhagwan Dayal received back unserved. Thereafter, vide order dated 17.07.2003, the defendants were ordered to be served by way of publication for 18.09.2003. On that day, none appeared on behalf of the defendants and they were proceeded against *ex parte*. The trial Court has recorded a finding of fact that PW 1 Subhash Chand, process-server, who reported that Narayan Dutt had refused to accept notice, admitted during the cross-examination that he did not know Naryan Dutt personally and he reported on the summons as refusal of Narayan Dutt, on the identification of Jaswant Singh Chowkidar, however, the aforesaid Jaswant Singh has not been examined by the petitioner to prove that Narayan Dutt had refused to take the summons. The trial Court has also recorded a finding of fact that notice issued to Bhagwan Dayal for 17.07.2003 shows that he was not found on that day on the given address and the summons received back unserved with the report of process-server. The trial Court has rightly relied upon Gram Panchayat vs. Surat Singh 1995 (2) CCC 71 wherein it has been held that substituted

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service through munadi cannot be ordered on the first date, when the summons had been received back unserved. The trial Court has rightly recorded that there was nothing on the record to presume that Bhagwan Dayal was trying to avoid the service of summons and, therefore, service of Bhagwan Dayal through publication for 18.09.2003 was not a proper service.

Learned counsel for the petitioner has failed to show that finding of fact recorded by the trial Court is perverse or illegal or mis-appreciation of the material evidence on record. In revision, the Court has limited power and cannot re-appreciate the evidence. Consequently, the finding of fact recorded by the trial Court does not warrant interference in civil revision.

Dismissed.

**17.02.2016**  
parveen kumar

**(Paramjeet Singh Dhaliwal)**  
**Judge**