

243.

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

Civil Revision No.7563 of 2015

Date of decision:18.05.2016

Kulwinder Singh

... Petitioner

versus

Ved Parkash

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. H.P.S. Ghuman, Advocate,
for the petitioner.

Mr. Rajbir Singh, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. In a petition to set aside a decree passed in a summary suit, the plea by the defendant was that he had not been served at all.

The trial court was not convinced and dismissed the petition. The revision petitioner seeks for reversal of the decision.

2. Unlike an ordinary suit where a petition for setting aside an ex parte decree is filed and the court's consideration will be whether there were justifiable circumstances for the absence, in a summary suit, the rules of game are slightly different. In **Mahesh**

Kumar Joshi Versus Madan Singh Negi-AIR 2015 (SC) 974, the court observed that even apart from showing a justifiable circumstance for absence, an applicant must show that he has reasonable defence. In fact, there had been no attempt at all made by the petitioner to disclose the kind of defence which he had. The Supreme Court observed in **Mahesh Kumar Joshi** (supra) that special circumstances which Order 37 Rule 4 CPC dictated would require the court to balance the equities and save the interest of the plaintiff and appropriate condition will have to be laid down. An unconditional right of defence will obtain in every situation where some prima facie case exists for the defendant for a court to infer from the facts disclosed. Even when there was no defence set forth already in the application to set aside the ex parte decree, I asked the counsel the likely defence which he could have used for applying to the court for leave to defend. The counsel states that the signatures found in the document were taken on blank papers and there were several pages for filling up recitals on the promissory note. The signature in the promissory note and the receipt between the plaintiff and the defendant are themselves not denied. It is contended that the defendant was a farmer and the plaintiff was a Commission Agent and there were transactions of money and grains prior to the institution of suit. The nature of defence is such that though not prima facie strong, the defendant will have, as a matter of grace and

mercy a right to defend on condition that he deposits not the entire suit claim as it was done in **Mahesh Kumar Joshi** (supra) but a deposit of ₹3 lakhs in cash within a period of 4 weeks from the date of receipt of copy of this order and security of immovable property to the tune of ₹10 lakhs within a further period of 2 weeks. The directions shall be complied with within the time stipulated, failing which, the order already passed shall remain and the opportunity for defence will be taken as withdrawn.

3. If the deposit of amount is made, the plaintiff is entitled to withdraw the same without any security, but needless to state that it will be subject to the final outcome of adjudication. The statement shall also be filed after satisfying the conditions within a period of 4 weeks from the time when the last date for furnishing the security of immovable property is to be complied with. If the statement is not filed as directed, the defence shall be taken as struck off and the court will proceed to pass further orders in accordance with law.

4. The order impugned is set aside and the civil revision is allowed on the above terms.

(K.KANNAN)
JUDGE

18.05.2016
sanjeev