

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR No. 8295 of 2016(O&M)
Date of decision :08.12.2016

Saroj Kumar

.....Petitioner

Versus

Hari Dutt Arya

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Keshav Partap Singh, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the judgment dated 21.10.2016 (Annexure P-3) passed by the learned District Judge, Bhiwani and the order dated 09.05.2016 passed by the learned Addl. Civil Judge (Sr. Division), Charkhi Dadri, vide which the application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (for short 'CPC') for setting aside the *ex parte* judgment and decree dated 24.05.2011 has been dismissed.

2. The petitioner has filed an application under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 24.05.2011 on the grounds *inter alia* that he was neither presented with any summons nor he avoided the service thereof. The respondent-plaintiff has deliberately given his wrong address. At the relevant time, he was not residing at Arya

Nagar, District Bhiwani. In-fact, he was residing at Village Barwada, District Jaipur. Earlier to that, he had installed stone crusher at Garhi Khudana, Tehsil and District Mahendergarh (Haryana) in the year 2005. He had not visited his native village Arya Nagar since the year 2005. Even, the process server has reported on 07.03.2009 that he was not residing at Arya Nagar. It is further pleaded that respondent has colluded with the Process Server and procured the false report. It is further pleaded that in-fact no *munadi* was carried out in the village. He only came to know on 14.09.2011 on receiving the telephonic message from the Patwari Halqa of village Arya Nagar about the passing of the impugned decree dated 24.05.2011. Hence the application.

3. The said application was contested by respondent on the grounds *inter alia* that the summons were duly presented to the appellant and he avoided the service thereof. Thereafter, he was ordered to be served through *munadi*. He was residing at Arya Nagar at that time and was fully aware of the decree. With these pleas, respondent-plaintiff pleaded for dismissal of the application.

4. The learned trial Court framed the following issues:-

1. Whether the judgment and decree dated 24.05.2011 passed in Civil Suit no.218 of 2008 Hari Dutt Vs. Saroj for recovery is liable to be set aside?OPP
2. Whether the present petition under Order 9 Rule 13 CPC is not maintainable?OPD
3. Relief.

5. On appreciating the evidence brought on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the application vide impugned order dated 09.05.2016.

6. Aggrieved with the aforesaid order, the petitioner preferred an

appeal. The same has also been dismissed by the learned District Judge, Bhiwani vide impugned judgment dated 21.10.2016. Hence this petition.

7. I have heard Mr. Keshav Partap Singh, Advocate, learned counsel for the petitioner and have carefully gone through the paper book.

8. Initiating the arguments, learned counsel for the petitioner contended that at the time of issuance of the summons in the civil suit no.218 of 2008, the petitioner was not residing in Arya Nagar. He contended that even the process server has reported on 07.03.2009 that the petitioner was not residing at Arya Nagar and he has shifted to Mahendergarh as he installed the stone crusher there. Thus, he contended that the respondent-plaintiff has given the wrong address of the petitioner in the suit. So, there can be no question of avoiding the service of summons by the petitioner. He further contended that the fact that the petitioner was not residing at Arya Nagar at the relevant time is fully supported from the evidence adduced by the petitioner. The copy of ration card, certificate issued by the Sarpanch and the police report have been wrongly ignored by the learned Courts below. He further contended that there can be no purpose of effecting the *munadi* in village Arya Nagar as the petitioner was not residing there at the time. Thus, he contended that the petitioner was not duly served with the summons. He only came to know about the *ex parte* judgment dated 24.05.2011 on receiving the telephonic call from the Halqa Patwari on 14.09.2011. Thus, he contended that the *ex parte* judgment and decree dated 24.05.2011 are liable to be set aside and the petitioner should be given a chance to contest the suit on merits.

9. I have duly considered the aforesaid contentions.

10. The basic plea raised by learned counsel for the appellant is that

at the relevant time i.e. in the year 2009, when the summons were issued in the civil suit no.218 of 2008, the petitioner was not living in village Arya Nagar and has been sifted to village Garhi Khudana, Tehsil and District Mahendergarh and then to village Barwada, District Jaipur (Rajasthan), but the said stand of the petitioner is contradicted by his own document. The petitioner has filed a divorce petition against his wife. The certified copy of the judgment dated 28.08.2012 passed in that divorce petition is Ex.P-11. The said petition was filed on 27.02.2012 and in the said petition the address of the petitioner was shown to be of Arya Nagar, District Bhiwani i.e. the address of the petitioner mentioned in the suit. So, the plea raised by the petitioner that he was not residing at village Arya Nagar since the year 2005 and the time when the summons were issued in the suit has no legs to stand.

11. From the statement of RW-4-Narender Singh, Process Server, it comes out that he has visited village Arya Nagar on 28.04.2009. He was accompanied with Rajbir, Chowkidar at that time and respondent was residing there. But, on coming to know that summons were issued against him, he had left the spot. Accordingly, he carried out the affixation of the summons at his house. The said report has also been witnessed by Rajbir, Chowkidar of the village. Even, the proclamation by way of *munadi* was carried out in the village on 03.06.2009, which was also witnessed by Rajbir and Sardar singh. Thus, the aforesaid evidence shows that the petitioner was duly served in the civil suit no. 218 of 2008, but he intentionally did not appear. Consequently, the petitioner has not been able to make out any sufficient cause for setting aside the *ex parte* judgment and decree dated 24.05.2011.

12. Thus, I do not find any perversity or legal infirmity in the concurrent findings recorded by the learned Courts below.

13. So, the present revision petition has no merits and the same is hereby dismissed.

08.12.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No