

Civil Revision No.8412 of 2014

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

Civil Revision No.8412 of 2014

Date of decision: 27.01.2016

Suman

....Petitioner

Versus

Rajbala and others

....Respondents

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. Sudhanshu Makkar, Advocate, for the petitioner.
Mr. R.A. Sheoran, Advocate, for respondent No.1.

PARAMJEET SINGH DHALIWAL, J.

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 14.11.2014 (Annexure P-7) passed by learned Civil Judge (Junior Division), Bhiwani, whereby application moved by petitioner/defendant No.12 for setting aside ex parte order dated 04.02.2011, has been dismissed.

Brief facts of the case are that respondent No.1/plaintiff filed a suit for declaration and permanent injunction as consequential relief. On 26.08.2010 summons were issued to petitioner/defendant No.12 for 21.09.2010., However, it was reported by the process server that he could not find any person in the name of the petitioner. Again on 22.09.2010 summons were issued to the petitioner for 13.10.2010.

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Again process server gave the same report. On an application moved by respondent No.1/plaintiff, vide order dated 13.10.2010 petitioner was ordered to be served through publication in the newspaper 'Dainik Chetna' for 07.12.2010. On 07.12.2010 Presiding Officer was on leave and the case was taken up on 06.12.2010 and adjourned to 04.02.2011. Vide order dated 04.02.2011 trial Court passed the order that service was complete and defendants No.3, 6 to 12 and 16 were ordered to be proceeded against ex parte. On coming to know about the pendency of the civil suit against him, petitioner/defendant No.12 moved an application for setting aside the ex parte order dated 04.02.2011. The same has been dismissed vide order dated 14.11.2014 by learned Civil Judge (Junior Division), Bhiwani. Hence, this revision petition.

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

Learned counsel for the petitioner contended that impugned orders passed by trial Court suffer from grave error of law as trial Court wrongly overlooked the reports of the process server that there was no person in the name of Smt. Suman w/o Narender Singh s/o Sh. Mehtab Singh caste Ahir, in Village Dinod. Petitioner has been proceeded against ex parte on the basis of publication in 'Dainik Chetna' newspaper which has no circulation in District Jhajjar where the petitioner resides permanently.

Learned counsel for respondent No.1 vehemently opposed the contentions raised by the learned counsel for petitioners on the ground

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that application had been filed after a considerable delay.

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

Petitioner was proceeded against ex parte on the basis of publication in the newspaper which has no circulation in the area where petitioner resides. Otherwise also publication is ordered only when the Court is satisfied that the party is avoiding service or for any other cogent reason that the summons cannot be served in the ordinary way. It is the case of the petitioner that she had purchased the land from Smt. Mishri wife of Raj Rup vide registered sale deed dated 11.04.2008 and from Dharambir son of Raj Rup vide registered sale deed dated 18.10.2007, which are challenged in the suit filed by respondent No.1/plaintiff. From the perusal of record it is clear that in both the sale deeds address of the petitioner has been mentioned as “Smt. Suman wife of Sh. Narender Singh son of Mehtab, r/o House No.79, Ward No.8, Delhi-Gate, Jhajjar, Tehsil and District Jhajjar”, however, summons were issued to the petitioner at the address of Village Dinod, which as per report of the process service also was wrong. Thus, service was not effected on the correct address.

It is settled principle of law that cases should be decided on merit and not merely on technical grounds. Rules of procedure are handmaid of justice and to do substantial justice.

In view of the fact that petitioner has been deprived of her valuable right, present petition is allowed. Impugned order dated

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14.11.2014 (Annexure P-7) passed by learned Civil Judge (Junior Division), Bhiwani is set aside and application for setting aside the ex parte proceedings is allowed subject to costs quantified at Rs.5,000/-, to be deposited with the concerned District Legal Services Authority. The petitioner shall be afforded an opportunity to file written statement, if not already filed.

(Paramjeet Singh Dhaliwal)
Judge

January 27, 2016
R.S.