

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 8772 of 2014
Date of Decision: 7.1.2016**

Sakatar Singh

---Petitioner

versus

Manjit Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Anil Chawla, Advocate
for the petitioner**

**Mr. Malkiat Singh, Advocate
for respondent No. 1**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition is directed against the order dated 27.10.2014 whereby evidence of the petitioner, who has filed an application for setting aside ex parte judgment and decree has been ordered to be closed.

Counsel for the petitioner submits that the petitioner filed an application for summoning Manish Chander, Process Server who purportedly made a report on the summons sent for service of the petitioner in the main case filed by respondent Manjit Singh for specific performance

of an agreement to sell. On the summons sent for service of Manish Chander, a report was made by Kuldip Chand, Process Server that he made enquiry from Civil Nazar. Amritsar and came to know that there is no Bailiff or Process Server by the name of Manish Chander. It is argued that Manish Chander is working as a Process Server and his examination is relevant much less material for just and proper decision of the application for setting aside ex parte decree. The petitioner cannot be put to disadvantage because of a wrong report made by one of the serving officers of the Court. It is further argued that as the respondent is yet to start his evidence in rebuttal, no prejudice is likely to be caused to him in case the petitioner is allowed one opportunity to examine Manish Chander, Process Server. The petitioner has already deposited ₹20,000/- as costs with the Registry of this Court in compliance with order dated 23.12.2014 passed at the time of notice of motion and the said amount may be paid to the respondent.

Counsel for respondent No. 1, on the other hand, has submitted that the present petition has been preferred in order to delay execution of the decree passed in his favour.

I have heard counsel for the parties and perused the records.

Counsel for the respondent has not disputed that the petitioner submitted an application for summoning Manish Chander, Process Server and summons of the witness were sent by the Court but received back unserved with the aforesaid report given by one Kuldip Chand, Process Server. It has also not been disputed that Manish Chander is one of the employees of the Court and is available for examination. Once the

petitioner has summoned a witness through the process of the Court and has not defaulted in any manner whatsoever to facilitate his summoning, the petitioner cannot be condemned for his failure to examine such a witness by closing his evidence. The evidence of Manish Chander is material and relevant for decision on the issue as to whether the petitioner was duly served in the civil suit preferred by Manjit Singh seeking specific performance of the agreement to sell which was decreed on 10.1.2007 in absence of the defendants. That being so, it is expedient in the interest of justice that the petitioner is allowed at least one opportunity to examine Manish Chander as a witness subject to payment of costs of ₹ 20,000/- already stand deposited with the Registry of this Court in compliance with order dated 23.12.2014.

In view of what has been discussed hereinabove, the petition is allowed and the petitioner is provided one opportunity to examine Manish Chander, Process Server as a witness. The petitioner shall ensure presence of the witness before the Court concerned on the date fixed for the purpose. The amount of ₹20,000/- deposited by the petitioner shall be released by the Registry of the Court in favour of respondent Manjit Singh, as per rules.

(Rekha Mittal)
Judge

7.1.2016

PARAMJIT