

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

CR No.1140 of 2017.

Date of Decision: 16.02.2017.

Pathana Ram

....Petitioner.

VERSUS

Subhash Chand and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.S. Budhwar, Advocate for the petitioner.

SNEH PRASHAR, J.

This petition invoking the provisions of Article 227 of the Constitution of India has been filed by petitioner-defendant No.1 seeking modification/ setting aside of order dated 17.01.2017 passed by learned Additional District Judge, Kurukshetra by virtue of which his appeal against the order dated 19.08.2015 passed by learned Civil Judge (Junior Division), Kurukshetra dismissing the application under Order IX Rule 7 of the Code of Civil Procedure (for short, "CPC") for setting aside the exparte order dated 20.01.2012, was allowed.

The submissions made by Mr. R.S. Budhwar, learned counsel for the petitioner have been considered.

It is submitted by learned counsel that the petitioner had no notice of the suit. No summon/notice was served upon him. Though there is a report of refusal by the process server on the summon but the fact is that

the petitioner had never refused to accept the summon. On 30.08.2014, respondent No.2 Raghbir Singh informed him about the exparte order and as soon as he became aware of the pendency of the suit, he filed an application under Order 9 Rule 7 CPC before learned trial Court for setting aside the exparte order dated 20.01.2012, but his application was dismissed vide order dated 19.08.2015 assuming that he had been duly served.

Learned counsel contends that the petitioner challenged the order dated 19.08.2015 but his appeal was partly allowed by learned Additional District Judge observing that the petitioner is allowed to join the proceedings at this stage. Learned counsel asserted that the agreement to sell dated 21.11.2008 has been alleged to be entered into by respondent No.1 with the petitioner and it is the petitioner who can rebut the same, therefore, the petitioner be given one opportunity to file written statement and produce evidence in support of his pleadings.

The suit was filed in the year 2011. The contention of the petitioner that he had not been served and he never refused to accept the notice of the suit is proved to be wrong by the copy of the order dated 19.08.2015 (Annexure-P5) passed by learned trial Court and produced by the petitioner himself with the instant petition. Learned trial Court observed that the notice sent to the petitioner-defendant No.1 was received back with the report that the petitioner had refused to accept the notice and the process server in the form of his affidavit had duly affirmed the said fact and thereafter service through munadi was effected. There is presumption of authenticity attached to the report of the process server unless proved otherwise when despite service through substituted service the petitioner did

when the case was fixed for evidence of the proforma respondents, the petitioner moved the application for setting aside the exparte order. Apparently, the application had been filed with a malafide intention to delay the proceedings. Be that as it may, the fact is that the subsequent purchasers were contesting the suit from the very initial stage, that too is an additional factor which proves that the petitioner was aware of pendency of the suit but had intentionally not appeared. In the backdrop of said facts, learned trial Court dismissed the application of the petitioner. However, learned appellate Court finding the petitioner as the main party to the suit and his presence being necessary for proper adjudication of the matter, had partly allowed the appeal observing that the petitioner can join proceedings in the suit at this stage.

Thus, finding no illegality or perversity in the order dated 17.01.2017 passed by learned Additional District Judge, the instant petition is dismissed.

(SNEH PRASHAR)
JUDGE

16.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**