

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 117

Civil Revision No.1927 of 2017 (O & M)

Date of Decision: April 25, 2017

Karamjit Singh

..... PETITIONER

VERSUS

Nirmal Kaur

..... RESPONDENT

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

PRESENT: - Mr. Nitin Narula, Advocate, for the petitioner.

Mr. K.B. Raheja, Advocate, for the caveator.

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Jaspal Singh, J

1. By virtue of instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside order dated November 29, 2016 passed by the Civil Judge (Junior Division), Ferozepur vide which application under Order IX Rule 13 CPC read with Section 151 CPC filed by the defendant – respondent has been accepted.

2. The brief facts giving rise to the instant petition are that petitioner – plaintiff filed a suit for specific performance of agreement to sell dated August 27, 2010 executed by Sardar Singh son of Kashmir Singh (since deceased), husband of respondent – defendant. The said

suit was decreed exparte vide judgment dated August 07, 2013. Subsequently, on April 03, 2015, respondent – defendant moved an application under Order IX Rule 13 CPC for setting aside exparte judgment & decree dated August 07, 2013. Though, said application was resisted by the petitioner – plaintiff but that was allowed vide impugned order dated November 29, 2016, which necessitated the filing of instant petition.

3. At the very outset, it would be apt and proper to mention that Order XLIII Rule 1 CPC, deals with appeals from orders and a glance at the aforesaid provisions makes it crystal clear that no appeal has been provided against an order whereby application under Order IX Rule 13 CPC has been allowed and exparte judgment has been decided. However, order XLIII Rule 1 CPC provides an appeal where such an application for setting aside exparte judgment has been rejected. Meaning thereby, the intention of the Legislature is that the matter be adjudicated upon on merits.

4. As far as the revision under Section 227 of the Constitution of India is concerned, the aggrieved person is at liberty to file the same when same is to be considered and decided within the limit, scope and jurisdiction of the revisional court.

5. During the course of arguments, the simple contention of learned counsel for the petitioner is that petitioner was duly served by way of substituted service i.e. summons or Munadi or affixation of summons prior to passing of exparte proceedings as well as exparte judgment & decree. Infact, the respondent – defendant had refused to

of refusal and finding that service of respondent/defendant is not possible through ordinary process, she was ordered to be served through substituted service by way of Munadi and affixation. Accordingly, respondent was served by way of Munadi and copy of summons was also pasted on the conspicuous part of her house. The petitioner - plaintiff has examined both the Process Servers who were entrusted with summons as well as Munadi, and they have categorically deposed on Oath that respondent – defendant refused to accept the service of summons. It was only thereafter, she was ordered to be served through Munadi and affixation. The Process Servers are the public servants and have done their duties in the official discharge of their functions and they cannot be looked with any suspicion. Their testimonies cannot be discarded or disbelieved on any ground. The evidence, so adduced by the respondent - defendant is not suffice to rebut their sworn testimonies. The Process Servers are neither foe nor friends of petitioner – plaintiff.

6. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant but does not find any legal and factual substance therein.

7. It would be appropriate to mention that provisions contained in Order V Rule 19 CPC are mandatory in nature and in the absence of following the procedure under the said rule, it can be clearly said that there was no service of summons on the defendant. To buttress this observation, we can have the reference of pronouncements of Bombay High Court delivered in the case of *Smt. Manju w/o*

Baldev Narang & another vs. Prakash s/o Manohar Lokhande & others, 2014(1) Civil Court Cases 487, in which other judgments of Bombay High Court have been relied upon. Para 10 of the said judgment reads as under:-

“10. Learned counsel also invited my attention to the judgment of this court in the case of **G.S. Ramchandran vs. M.M. Rajadhyaksha, reported in 1984 Mh.L.J. 247**, and another judgment of this court in the case of **Mahmood Khan s/o Noot Khan vs. Goverdhan s/o Shankar Pardeshi, reported in LAWS(BOM)-1982-2-2** and submits that the provisions of Order V Rules 17 and 19 of the Civil Procedure Code are mandatory in nature and in absence of following the procedure under the said Rules, in the facts of the present case, it is crystal clear that there was no service of summons on the original defendants.”

8. Adverting to the facts & circumstances of the case in hand, the respondent – defendant was proceeded against *ex parte* on the basis of Munadi and affixation i.e. by way of substituted service. In case **G.S. Ramchandran (supra)**, the Bombay High Court has held that the court can make an order that suit be heard *ex parte* only when it is proved that the summons was duly served. Such a proof is to be obtained by following the procedure under Order V Rule 19 CPC. In the said judgment, provisions of Order V Rules 6, 17, 19 and 19A CPC were discussed in detail and it was held that the provisions of Order V Rule 19 CPC are mandatory in nature and ultimately set aside the *ex parte* decree passed by the courts below. In Para 19 of the said judgment, it was observed that the procedure to be followed before *ex parte* decree is passed is to be strictly complied with.

9. The mere fact that both the Process Servers have been examined by the petitioner – plaintiff to prove the refusal of service on

the part of respondent – defendant as well as execution of Mundai & affixation of summons at the conspicuous place of her house but that is not sufficient to rebut the sworn testimony of respondent – defendant who has categorically deposed that she was not duly served, especially in the circumstances that summons were not witnessed by an independent person but by the petitioner – plaintiff who is already interested in the matter. Thus, this Court is of the considered view that there is no infirmity or illegality in the impugned order and it does not call for any interference by this Court.

10. As a sequel to the aforesaid discussion, there is no merit in the instant revision petition and same is dismissed.

11. No order as to costs.

April 25, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No