

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

Civil Revision No.377 of 2016(O&M)

Date of Decision : 07th April, 2017

Gajender Pal Singh Malik

..... Petitioner

Versus

Tajender Pal Singh Malik and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ashok Kumar Jindal, Advocate
for the petitioner.

Mr. Dinesh Malik, Advocate
for respondent No.1.

Mr. Munfaid Khan, Advocate
for Mr. Jimmy Singla, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition filed by the defendant under Article 227 of the Constitution of India is directed against the order dated 02.01.2016, passed by the learned trial Court, whereby the application of the petitioner for setting aside the ex parte order dated 13.12.2011 was dismissed.

Notice of motion was issued.

Heard learned counsel for the parties.

Relationship between the parties is not in dispute. Plaintiff-respondent No.1 is the son of petitioner-defendant No.1. As per service report dated 15.03.2010 (Annexure P-7), petitioner was not found residing at the given address. Similarly, as per service report dated 20.07.2010

(Annexure P-8), house of the petitioner was found locked. Thereafter, neither the plaintiff-respondent made any effort to serve defendant No.1-petitioner either by dasti process or furnishing his correct address. Petitioner was sought to be served by way of substituted service through publication. The case put up by the petitioner was that he was never served in accordance with law. This was the reason that the petitioner moved the application for setting aside the order dated 13.12.2011 whereby he was proceeded against ex parte. It is also not in dispute that the application was moved by the petitioner during the pendency of the suit.

Since the above said undisputed facts and circumstances have not been properly considered by the learned trial Court, in the correct perspective for passing the impugned order, the same has resulted in causing manifest justice to the petitioner and the impugned order cannot be sustained.

It is the settled preposition of law that every Court of law must make an endeavour to grant reasonable opportunity to both the parties to the litigation to put up their best case before the Court. It is also the cardinal principle of law that nobody should be condemned unheard. In case the impugned order is allowed to stand, it will violate the basic principle of audi altrem partem. There cannot be any doubt that justice must not be made to suffer under any circumstances. Having said that, this Court feels no hesitation to conclude that the learned trial Court misdirected itself while passing the impugned order and the same cannot be sustained for this reason also.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, impugned order is hereby set aside. Application of the petitioner for setting aside the order dated 13.12.2011 whereby he was proceeded against exparte would stand allowed.

Consequently, learned trial Court is directed to allow the petitioner to file his written statement and thereafter proceed further to decide the suit at an early date in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

07th April, 2017
mamta

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No