

CR No. 3681 of 2017 (O&M)

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No. 3681 of 2017 (O&M)
Date of decision: 19.5.2017**

Balwinder Kaur

...Petitioner

Versus

Randhir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vijay Lath, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition, at the hands of plaintiff, filed under Article 227 of the Constitution of India, is directed against the order dated 28.4.2017 passed by the learned trial court, whereby application moved by the defendant-respondent herein under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure ('CPC' for short) was allowed.

Heard learned counsel for the petitioner.

A bare perusal of the impugned order passed by the learned trial court would make it crystal clear that it was passed after framing appropriate issues and considering documentary as well as oral evidence produced on record by both the parties. Further, learned trial court was conscious of the fact that since the application under Order 9 Rule 13 CPC was filed at a belated stage by the defendant, plaintiff-petitioner was rightly compensated by payment of reasonable costs. Learned trial court also found that defendant-Randhir Singh was not properly served in the suit filed by the

CR No. 3681 of 2017 (O&M)

petitioner-plaintiff. The impugned order is a detailed and reasoned one. Having said that, this Court feels no hesitation to conclude that the learned court below was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

So far as judgment of the Hon'ble Supreme Court in **Parimal Vs. Veena @ Bharti, 2011 (3) SCC 545** and judgment of Delhi High Court in **Pal News Media (P) Ltd.; Lemon Entertainment Ltd. Vs. Super Cassettes Industries Ltd, 2015 (5) RCR (civil) 724**, relied upon by learned counsel for the petitioner, are concerned, there is no dispute about the law laid down and observations made therein. However, on a careful perusal of the cited judgments, none of them has been found to be of any help to the petitioner, these being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75**, **State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533**.

As noticed hereinabove, learned trial court rightly recorded a cogent finding that defendant was not properly served before he was proceeded against ex parte. Once the defendant has taken a specific plea in his application that he was not even residing at the address given when he was sought to be served, in that situation, a heavy onus was on the plaintiff-

CR No. 3681 of 2017 (O&M)

petitioner to prove the signatures of the defendant on the notice issued by the learned trial court, by producing Fingerprint and Handwriting Expert, however, she failed to do so, for the reasons best known to her. In such a situation, it can be safely concluded that the learned trial court committed no error of law, while passing the impugned order, for this reason also.

It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Every court of law must make an endeavour to grant reasonable opportunity to both the parties to the litigation to put up their respective best cases before the court. Neither any party to the litigation should be condemned unheard, nor forced to go home with the grievance that it was not granted due opportunity to put up its best case. While proceeding on this principle of law, the learned courts would be achieving twin objects; i) they would be avoiding multiplicity of litigation and ii), the learned courts would be in a much better position to do complete and substantial justice between the parties. It is equally true that while doing complete and substantial justice, technicalities must not be allowed to stand in the way of imparting justice.

Had the application moved by the defendant-respondent No.1 under Order 9 Rule 13 CPC been dismissed by the learned trial court, a serious miscarriage of justice would have been taken place and golden rule of Audi Alteram Partem would have been glaringly violated. Since the learned trial court has rightly followed the abovesaid settled principles of law, while passing the impugned order, the same deserves to be upheld, for this reason as well.

During the course of hearing, learned counsel for the petitioner could not could not point out any patent illegality or perversity in the

CR No. 3681 of 2017 (O&M)

impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order has been found duly supported by sound reasons and the same deserve to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

19.5.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No