

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

Date of decision :15.12.2017

1. CR No.4123 of 2017(O&M)

Bani Singh

... Petitioner

Versus

Satbir

... Respondent

2. CR No.4125 of 2017(O&M)

Bani Singh

... Petitioner

Versus

Rishi Pal

... Respondent

CORAM : HON'BLE MR.JUSTICE RAJ MOHAN SINGH

Present : Mr. N.K. Malhotra, Advocate
for the petitioner(s).

None for the respondent(s).

Raj Mohan Singh, J.(ORAL)

[1]. Vide this common order, CR No.4123 of 2017 titled Bani Singh Vs. Satbir and CR No.4125 of 2017 titled Bani Singh Vs. Rishi Pal are being disposed of as common questions of law and facts are involved therein.

[2]. Petitioner has challenged the order dated 22.07.2016 as well as order dated 25.04.2017 passed by the Courts below whereby application for setting aside the *ex parte* order dated 26.07.2011 and *ex parte* judgment and decree dated 30.04.2012 was dismissed.

[3]. Petitioner Bani Singh was proceeded against *ex parte* on 26.07.2011. Summon was issued to him on 14.06.2011 and the same was received back with the report that he had refused to receive the summon and thereafter, copy of summon was pasted at his house. The report was allegedly witnessed by one Rame (Chowkidar) of the village who has also appeared as AW 1 before the trial Court. The witness has testified that he went to the house of Bani Singh where Bani Singh refused to receive the summon in his presence. The testimony of aforesaid Rame (Chowkidar) would give following factual matrix on the aspect of service of the petitioner. AW 1 Rame was a private Chowkidar who used to be appointed by Sarpanch in the absence of regular Chowkidar namely Krishan. The witness has admitted that the name of the person is not known to him who brought the summon. The witness did not come at his house. He was sitting in the house of Sarpanch at that time. No I-Card of Chowkidar is available with him, nor he has been appointed by any authority, rather he used to work on the asking of Sarpanch. The witness further admitted that no affixation was made in his presence and nothing was written by the Process Server on the summon in his presence. The witness was only asked to sign the report.

[4]. Perusal of the aforesaid contents of the statement would show that the compliance of Order 5 Rule 17 CPC has not

been done. The Courts below have proceeded against the petitioner only on the premise that in the event of refusal by the petitioner, affixation was made in the presence of Rame (private Chowkidar).

[5]. Notice of motion was issued on 03.07.2017. As per office report dated 19.09.2017, notice issued to the respondent has been duly served through his brother Satyaparkash. There was no representation on behalf of the respondent on 19.09.2017. None has appeared even today on his behalf.

[6]. Having considered the material on record, I am of the view that the petitioner was not lawfully served with the process of the Court. The statement of AW 1 Rame (private Chowkidar) and statement of AW 3 Krishan (Chowkidar) would show that the service allegedly effected by the Process Server in the presence of Rame (private Chowkidar) was not a proper service in consonance with Order 5 Rule 17 CPC.

[7]. In view of above, I deem it appropriate to set aside the impugned orders dated 22.07.2016 and 25.04.2017 passed by the Courts below. These revision petitions are accordingly allowed. Necessary consequences to follow.

[Raj Mohan Singh]
Judge

15.12.2017

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No