

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

**CR No.4491 of 2017 (O&M)
Date of Decision: 28.07.2017**

Ritu Jain

...Petitioner(s)

Versus

Vinod Kumar Jain

... Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.K. Kharb, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

CM No.15724-CII of 2017

This is an application filed under Section 151 C.P.C. for placing on record the summons and preponing the date of hearing.

The application is allowed. The case is taken up on the Board for today. The case was adjourned to 27.09.2017 on 12.07.2017 and the petitioner had been asked to produce on record the copy of the summons which was stated to have been received by the petitioner. The instant application has been filed for preponement and for placing documents on record.

CR No.4491 of 2017

The submission on behalf of the petitioner is that the respondent had filed a suit for possession on the basis of a Will executed by the father-in-law of the petitioner and the petitioner did not get any notice nor any *Munadi* was effected and there was no reason for her to avoid the service and when she came to know

about the pendency of the suit she filed an application in August, 2016 for setting aside an *ex parte* proceeding dated 26.09.2014 and the trial Court has rejected her application and though she has been allowed to join at the stage of arguments on payment of costs.

Learned counsel submits that no service was effected and they have placed on record the copy of the summons and the report thereupon, and if the signatures on the summons and on the affidavit filed alongwith the petition are seen, it would be clear that they are not of the same person. He further submits that substantial justice should not be sacrificed and Court should allow her to join the proceedings and contest the case. Reliance was also placed upon '**Laxmibai Vs. Bhagwantbuva (SC) 2013(1)HLR 257**' and '**Nihala Vs. Irshad 2017(2) R.C.R.(Civil) 884**'.

A suit for possession was filed by Vinod Kumar against his brother's wife seeking possession of the ground floor of a shop. He was claiming mesne profits. The suit was filed in August, 2014. Summons were issued and report was received that personal service had been effected. The summons were signed by Ritu on 31.08.2014. The copy of the summons were placed on record by the petitioner on the asking of the Court on the last date of hearing. The submission now is that service was not effected and signatures on the summons were not that of the petitioner. This plea was not taken before the Court below. A copy of the application filed by the petitioner (Annexure P-6) is available on record and Para III of the

application reads as under:-

“That the applicant has never been duly served in the above case through the admitted legal mode of service. The applicant was never served through the registered cover nor any copy of the plaint etc. was ever sent by any legal mode to her. No Munadi or substituted service was ever effected at the spot nor the applicant was tried to be summoned in the case. The applicant has also never refused to receive any notice etc. of the Court.”

After seeking reply, trial Court observed as under:

“Whereas learned counsel for respondent/plaintiff argued that it has been pleaded by the applicant that he has never been duly served in the above case through the admitted legal mode of service and no any munadi etc. was effected. He also pleaded that she never refused to receive the summons of Court. Whereas after perusal of the case file it has been revealed that when case was fixed for 26.09.2014, notice to her received back duly served and when no one appeared on her behalf Hon'ble Court decided to proceed her against ex parte. He further argued that from her notice it is clear that she was having knowledge of the suit and volitionally to avoid the proceedings she never appeared before the Court. Moreover, from her application it has also not been revealed that now at the stage of arguments how it came to her knowledge that present suit is continued and at the stage of arguments. In the end he argued that she is not bona fide and ex parte against her cannot be set aside. After hearing both counsel and perusal of case law this Court is of the view that in the present case suit was filed on 21.08.2014 and summons were sent to the defendant/applicant through ordinary mode. After perusal of the summon it is clear that Smt. Ritu Jain W/o Rajiv Jain was found at home and she received summons of the

suit. As per report of summoning staff she received the summons on 31.08.2014. The backside of summon bears signatures of Smt. Ritu alongwith date. Thereafter, on 26.09.2014 when her summons were received duly served and no one appeared on her behalf, Court decided to proceed against her ex parte. In order dated 26.09.2014 it has already been recorded that summons received back duly served, which means on the day of order the Court was satisfied that summons were received by the defendant herself. On 10.08.2016, applicant filed this application to set aside ex parte order dated 26.09.2014. Order 9 Rule 6 provided that where the plaintiff appears and the defendant does not appear when the suit is called on for hearing then if it is proved that the summons was duly served, the Court may make an order that the suit be heard ex parte. After considering the Para No.3 of application in which it is pleaded that applicant was never been duly served through the admitted legal mode, this Court is not satisfied with the allegation of applicant as from a careful comparison of the signatures of applicant on application and summons it is clear that these signatures were marked by the same person. The plea of applicant is false and frivolous. Further, it has been pleaded by the applicant that she was never served through registered cover or munadi. It is well settled that when the defendant is duly served through ordinary mode, there is no need to adopt procedure of the alternative mode i.e. registered cover or munadi etc. Learned counsel for applicant relied upon M/s Nahar Singh Enterprises (supra). After perusal of the above said case law this court is of the view that it is a different situation in which the order was passed on Order 9 Rule 6(1)(c) of C.P.C. Whereas in the present case the service comes under the purview of Order 9 Rule 6(1) (a) when summons was duly served. Moreover, in this case the summons was

served within time as from the summons itself it was served on 31.08.2014, whereas the date for appearance was fixed as 26.09.2014. This Court is of the view that sufficient time was provided to the defendant to appear before Court and to file her written statement and reply. Further, learned counsel relied upon Ravindra Singh (supra). This case also not applied to the facts of the present case as in the present the defendant was duly served and after satisfaction Court proceeded against her ex parte. Whereas in the cited authority the matter was decided as summons were not served. Further he relied upon Dhanna (supra). In this case also the facts are much different from the present case. Applicant in any manner has not shown that she was ever deprived by the circumstances or any fraud committed by plaintiff for her appearance. In these circumstances, if application is allowed then it will amount to abuse of process of justice and it will also set an example how she is abusing the process. However, judgment has not been pronounced in this case and the case was fixed for final arguments. Keeping in view interest of justice, the applicant is hereby allowed to join proceedings of the case from the stage of arguments only subject to cost of ₹5000/- to be paid to DLSA. It is made clear that applicant is only joined for the arguments and now she cannot lead any evidence or file any written statement etc. Now to come up on 13.07.2017 for arguments.”

Service upon the petitioner had been effected on 26.09.2014, petitioner failed to appear despite the fact that she was served. After 02 years she has filed an application for setting aside the ex parte proceedings, giving reasons which are absolutely wrong. The plaintiff had closed its evidence and the case was fixed for final arguments. The petitioner has now been allowed to join the

proceedings at that stage on payment of costs.

Learned counsel for the petitioner had referred to two judgments, namely, ***Laxmibai's and Nihal's*** case (supra).

In *Laxmibai's* case, an appeal had been filed against the judgment, after the suit had been dismissed and Para-40 which was referred to by the petitioner reads as under:-

“The appellate court has erred by considering the irrelevant material, while the most relevant evidence, i.e., the adoption ceremony and the adoption deed, have been disregarded on the basis of mere surmises and conjectures. The correctness or authenticity of adoption deed is not disputed. What is disputed is that the natural parents of adoptive child who were definitely executing parties of the deed have signed as witnesses alongwith 7 other witnesses. In such a fact-situation, by gathering the intention of the parties and by reading the document as a whole and considering its purport, it can be concluded that the adoption stood the test of law. We think that cause of justice would be served, instead of being thwarted, where there has been substantial compliance of the legal requirements, specified in Section 16 of the Act 1956. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best.”

In *Nihal's* case, the issue was regarding additional evidence and the High Court had allowed the additional evidence as the documents were *per se* admissible.

None of the authorities are applicable to the facts or the question in issue here. Since the petitioner had been served, she cannot seek a retrial and file written statement. The application was belated. There was no application even for condoning the delay. There was no plea that the signatures were not hers.

I find no infirmity in the order, accordingly, the petition is dismissed.

July 28, 2017
ps-l

(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking
Whether Reportable

Yes/No
Yes/No