

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

**CR No. 470 of 2017
DECIDED ON: JANUARY 23, 2017**

CHANAN SINGH THROUGH HIS LRS

.....PETITIONERS

VERSUS

TARLOK SINGH KHURANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Harish Tewari, Advocate
 for the petitioner.

JASPAL SINGH, J

CM No. 1194-CII of 2017

Application is allowed, as prayed for.

CR No. 470 of 2017

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of impugned order dated September 12, 2016 (Annexure P-4) passed by learned Additional District Judge, Jalandhar thereby, upholding the order dated February 01, 2014 (Annexure P-3) passed by learned Civil Judge (Jr. Division), Jalandhar

whereby, application filed by plaintiff/petitioner under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure (for short 'Code') for setting aside the ex-parte judgment and decree dated August 25, 1999, has been dismissed with further prayer for setting aside the impugned ex-parte judgment and decree dated August 25, 1999.

While assailing the impugned order(s) passed by both the courts below, it has been argued with vehemence by learned counsel for the petitioners that the same are absolutely against the evidence available on file and settled canons of law. In fact, the petitioners were never served in the civil suit, in which the ex-parte judgment and decree dated August 25, 1999, has been obtained by the respondent. The petitioners were came to know about the passing of the ex-parte judgment and decree dated August 25, 1999 when respondent came to the house of petitioner-Chanan Singh on March 28, 2008 and asked to vacate the house/houses in possession of his sons. It was only thereafter, the petitioner-Chanan Singh rushed to the Court and consulted the counsel who after inquiry disclosed that respondent-Tarlok Singh has got an ex-parte decree on August 25, 1999. He further contends that neither the Process Server ever visited the house of the petitioner(s) nor he was served with any summons. The report of refusal of summons is a forged and fabricated one, which has been procured by respondent in connivance with Process Server with a sole objective to get an ex-parte decree passed. No proper procedure was also adopted as prescribed under Order V Rule 20 of the Code before the petitioner was proceeded against ex-parte. Moreover, both the courts below have wrongly observed that the petitioner was aware about the pendency of the civil suit in

which the ex-parte judgment and decree was passed and further that this fact has emerged in his cross-examination. The petitioner-Chanan Singh is aged above 85 years old and thus, it was due to his old age and slip of tongue he has stated that he came to know about the pendency of suit 10 years back instead of saying that he came to know after about 10 years of the passing of ex-parte judgment and decree. Similarly, the court below have also committed an error while observing that valid service has been effected upon the petitioner-Chanan Singh through publication. In fact, no notice was ever served upon the petitioner-Chanan Singh.

Learned counsel for the petitioner further contends that in case **Dharampal Singh vs. Amar Singh & Ors; 2013(2) Civil Court Cases 069 (P&H)**, this Court has observed that where defendant has not been served and substituted service has been ordered, there is no presumption that a person has a knowledge of such a publication. Similarly, if there is a court endorsement that a party had refused to receive summons even then, there is no presumption of the correctness of the refusal unless bailiff himself had been examined in Court to speak about the fact of refusal by the party. While concluding his arguments, learned counsel for the petitioner submits that since the petitioner-Chanan Singh was not properly and duly served, the question of limitation does not arise, as he only came to know about the passing of ex-parte judgment and decree on March 28, 2008 when the respondent-Tarlok Singh came and asked to deliver the possession of house/houses to him. Thus, the impugned orders passed by both the courts below are liable to be set aside and the matter deserves to be adjudicated on merits.

After bestowing due consideration to the various submissions made by learned counsel for the petitioner and perusal of documents available on file and scrutinizing the impugned orders, this Court does not find any legal or factual weight in the afore-said submissions.

A glance at the impugned orders transpires that the summons were issued to the petitioner-Chanan Singh immediately after the institution of suit before the trial Court, which was entrusted to Yashpal Singh the then Process Server, who has been examined by the respondent as RW-1. He has categorically deposed on oath that the summons were entrusted to him for getting the service effected upon Chanan Singh who refused to accept the same. The endorsement on the summons that petitioner-Chanan Singh has also refused to receive the summons was appended by the concerned officer. There is nothing on record to suggest that the said report is forged or fabricated. Rather, the endorsement was made in a regular course of its business by public servant in the discharge of his public duty. The Process Server was not examined by the petitioner-Chanan Singh. Rather, he was examined by the respondent before the trial Court during the pendency of proceedings under Order IX Rule 13 of the Code. Thus, the judgment relied upon by the petitioner during the course of arguments titled as **Dharampal Singh vs. Amar Singh & others (Supra)** is not at all attracted and is not helpful to the case of the petitioner. Moreover, both the courts below have consistently observed that petitioner-Chanan Singh has been duly served and he did not challenge the ex-parte judgment and decree within a prescribed period of 30 days. Rather, preferred a petition under Order IX Rule 13 of the Code after an expiry of more than 10 years. There is nothing

on record to suggest as to why the petitioner remained tight lipped for such a long period of a decade. Otherwise, also it is not the intention of law that an ex-parte judgment and decree be set aside just on the asking of a party simply on the ground that there is some failure on the part of process serving agency. There is sufficient evidence available on file from which it is fully established that the petitioner intentionally evaded the service of summons and refrained from appearing in the Court and did not bother to appear, despite having knowledge of the pendency of suit, to contest the same. There is also no explanation what to talk of any plausible explanation about an inordinate delay of about a decade.

In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such it stands dismissed.

JANUARY 23, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No