

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Revision No.4721 of 2017

Date of Order:25.07.2017

**Malkeet Singh**

**.Petitioner**

**Versus**

**Smt. Asha Rani**

**..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:- Mr. K.B.Raheja, Advocate,  
for the petitioner.**

**Mr. Gurinder Pal Singh, Advocate,  
for the respondent.**

**ANIL KSETARPAL, JUDGE (Oral)**

This revision has been filed by defendant against the orders passed by the courts below refusing to set aside exparte judgment and decree dated 21.07.2009, allowing redemption of mortgage.

At the outset, it must be noticed that counsel for the respondent has put in appearance and has produced before me a copy of the report that the possession of the shop in question has been delivered by the court official on 20.07.2017.

The respondent had mortgaged a shop to the petitioner vide registered mortgage deed No.9497, dated 30.12.2005. The respondent before filing the suit sent a notice to the petitioner calling upon him to redeem the mortgage on receipt of the amount. However, respondent did not agree.

In these circumstances, plaintiff filed a suit for possession by redemption of mortgage. A notice was sent at the residence of the

petitioner. The process server made a report dated 15.04.2008, which is read as under:-

*"today, he went to Jandi wali Gali in Sirsa city to know about Malkeet Singh son of Shri Khazan Singh and at the spot the house was found locked. On enquiry, the neighbourers told that the entire family had left the house in the night as a case had been registered against them. Out of police fear, they left the house and their whereabouts were not known."*

Thereafter, again the process server visited the house of the petitioner and made following report, dated 25.04.2008:-

*"he went to the spot and found the house locked. It was found that he had gone to Australia for the last about two months and whereabouts of his family is not known for the last twenty days."*

Thereafter, the Court finding that it is not possible to serve the defendant-petitioner through ordinary process, directed substituted service by publication of notice in two newspapers, one local Hindi and one national newspaper 'The Tribune' which has very good circulation in the State of Haryana. The orders passed by the Court on 03.06.2008 is extracted as under:-

*"summons issued to the defendant received back with the report that defendant has left the village and his whereabouts are not known. Hence, this court is left with no other option except to issue the service of defendant by way of publication in local newspaper*

*Samarghosh as well as in national newspaper. The Tribune for 20.08.2008, on depositing of publication charges within seven days."*

Even after publication, defendant-petitioner did not appear before the Court and, therefore, proceeded against ex-parte vide order dated 07.0.2008. The defendant-petitioner did not even chose to appear thereafter and as the suit remain pending for more than nine months.

After the ex-parte judgment and decree, defendant-petitioner claims that he gain knowledge for the first time on 26.01.2010 when he received notice of the execution petition. Defendant-petitioner thereafter filed application under Order 9 Rule 13 CPC for setting aside judgment and decree dated 21.07.2009.

After receipt of reply, the trial Court framed issues and allowed defendant-petitioner to lead evidence. It has been noticed by the Court that defendant-petitioner even intentionally delayed the decision of application for setting aside ex-parte judgment and decree as he availed 13 effective opportunities on 12.9.2011, 06.03.2012, 29.05.2012, 05.11.2012, 29.01.2013, 02.09.2013, 17.12.2013, 12.02.2014, 16.04.2014, 21.08.2014, 15.09.2014 and 10.10.2014. During these 13 effective opportunities, defendant-petitioner only examined himself as AW1 and the Court had to close his evidence, vide order dated 10.10.2014.

It is the case of the defendant-petitioner that he was away to Thailand from February 2008 to July 2008 and reports of process server dated 15.04.2008 and 25.04.2008 are false, as his wife and children were very much present in the house.

The defendant-petitioner further claims that he is semi literate

person and does not know English, therefore, notice published in the newspaper was also erroneous.

Learned trial court took almost 5 years to dispose of application under Order 9 Rule 13 CPC. The application was ordered to be dismissed by a detailed order. The appeal filed by defendant-petitioner, before the first appellate court again remained pending for two years and was dismissed on 29.03.2017.

Defendant-petitioner filed the present revision petition on 01.07.2017. Defendant-petitioner has made all possible efforts to frustrate the execution of the decree by adopting delay and tactics.

Learned counsel for the petitioner has submitted that the process server has not complied with the provisions of Order 5 Rule 17 CPC and therefore, there is material irregularity in ordering ex-parte proceedings against the petitioner. He submitted that as per procedure laid down in Order 5 Rule 17 CPC, the serving officer should affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain. Counsel for the petitioner has further submitted that the trial court committed an error in ordering publication without complying with provisions of Order 5 Rule 17 CPC.

I have considered the submissions made by counsel for the petitioner.

Order 5 Rule 17 CPC, no doubt, prescribes that even the defendant cannot be found at the given address, because of his absence from his residence, then the serving officer shall affix copy of the summons on the outer door. However, in the present case, the court had not proceeded

ex-parte on the report of the process server. Thereafter, the Court ordered substituted service in terms of Order 5 Rule 20 CPC. The trial Court ordered substitute service on being satisfied that it is not possible to serve the defendant-petitioner in ordinary process. The summons were directed to be published in two newspapers, one in Hindi, which was a local newspaper and one in The Tribune, which has a very good circulation in Northern India and particularly State of Haryana. Therefore, the contention of learned counsel for the defendant-petitioner that since there is irregularity, in service of summons due to non-compliance of provisions of Order 5 Rule 17 CPC, hence the order is liable to be set aside, cannot be accepted.

The Court made sincere efforts to serve the defendant-petitioner but since it was found that it was not possible to serve through ordinary process, therefore, notices were ordered to be published in two newspapers. Learned Court has further noticed that the conduct of defendant-petitioner in delaying the execution of the decree. The courts have noticed that defendant-petitioner availed 13 effective opportunities to lead evidence, spanning over more than three years. As noticed earlier, the application for setting aside ex-parte decree remained pending with the trial Court for little less than five years. Thereafter, even first appeal remained pending for two years. Such applications should be decided with promptitude. These applications cannot be allowed to frustrate the execution of the decree. The plaintiff-respondent filed a suit for redemption of mortgage in the year 2008, we are now in July, 2017.

As notice above, even the possession of the shop has been taken over by the plaintiff in execution of the decree before the revision petition was got listed for preliminary hearing.

Taking into consideration the facts available on the file and the orders passed by the courts below, I do not find any good ground to interfere with the orders passed by the courts below.

Therefore, the revision petition is ordered to be dismissed.

July 25, 2017  
nt

(ANIL KSHETARPAL)  
JUDGE

|                           |          |
|---------------------------|----------|
| Whether speaking/reasoned | : Yes/No |
| Whether reportable        | : Yes/No |