

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

**CR No.680 of 2014
Date of Decision:19.12.2017**

Mangat Ram

...Petitioner

Versus

Gurminder Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.R.L.Sharma, Advocate for the petitioner.
Mr.Sunil Agnihotri, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner is in the revision petition against dismissal of the application for setting aside the ex parte proceedings.

It is a positive case of the petitioner that he was residing in Lebanon when the suit was filed.

Learned counsel for the petitioner has drawn attention of the Court to the order passed by the Civil Judge on 20.4.1999 which reads as under:-

“Present: Sh.T.S.Saini, Advocate counsel for the plaintiff.

Summons of the defendant received back report that he is residing in some foreign country. Accordingly he be summoned through publication in the Daily Tribune, Chandigarh on deposit of publication charges within five days for the hearing date 1.6.99.”

On the basis of this report, the learned Civil Judge ordered substitute service and got the notice published in newspaper 'The Tribune'. After publication of notice, since the petitioner did not appear, ex parte proceedings were initiated and the suit was decreed.

Petitioner filed an application for setting aside the ex parte

proceedings, which has been dismissed by the court on the ground that the petitioner has failed to produce any evidence to prove that when the defendant went out of country and when he came back.

In the considered opinion of the Court, the approach of the courts below was not correct. Once it was reported to the court that the defendant is residing in foreign country, the court ought to have adopted the procedure as prescribed under Order 5 Rule 25 of the Code of Civil Procedure. However, the court failed to do that. Order 5 Rule 25 CPC enables the court to get the personal service effected by sending the summons through registered post, courier service, electronic mail service or other means provided under the High Court Rules and Orders. In this case, the learned court failed to adopt that procedure. The suit for possession has been decreed ex parte against the petitioner.

Taking into consideration the fact that the court failed to adopt the mandatory procedure for service of the summons, therefore, the impugned orders cannot be sustained.

In view of the above, the present revision petition is allowed. Ex parte decree against the petitioner shall stand set aside. However, taking into consideration the fact that the suit was filed in the year 1999, the trial court is directed to re-decide the suit within a period of one year from the date of receipt of a certified copy of this order.

19.12.2017
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No