

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

CR No.7255 of 2017(O&M)

Date of decision: 10.11.2017

Piara Singh

.....Petitioner

VERSUS

Jagdev Singh through his LRs

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gazi Mohd. Umair, Advocate for the petitioner.

REKHA MITTAL, J.

CM No.23852-CII of 2017

Heard.

Allowed as prayed for.

Annexures P-7 and P-8 are taken on record subject to just exceptions.

Disposed of accordingly.

CR No.7255 of 2017

The present petition directs challenge against orders dated 01.03.2017 (Annexure P-6) and dated 24.07.2015 (Annexure P-5) passed by the Courts below whereby application filed by the petitioner under Order 9 Rules 7 and 13 of the Code of Civil Procedure, 1908 (in short 'CPC') for setting aside ex parte judgment and decree dated 09.06.2006 was dismissed by the trial Court and the order passed by the trial Court was affirmed in appeal.

Counsel for the petitioner has submitted that the respondent/plaintiff filed a suit for specific performance of agreement to

sell dated 04.05.2004 in respect of land measuring 29 bighas 18 biswas 6 biswas in May 2005 and the same was decreed ex parte on 09.06.2006. It is argued that the petitioner was neither served personally nor any summons were sent for his service at his address abroad i.e. Canada, therefore, there was no due service of the petitioner and he cannot be condemned unheard and put to loss in respect of land subject matter of the suit. It is further submitted that as soon as the petitioner came to know about the ex parte judgment and decree dated 09.06.2006 as he received summons in April 2011 from Punjab and Haryana High Court in CR No.127 of 2011 titled **Makhan Singh Vs. Piara Singh and others**, he filed the instant application for setting aside ex parte judgment and decree. In addition, it is argued that the respondent/plaintiff did not examine the process server to prove that summons sent for service of the petitioner were received by Baljit Kaur, daughter of the petitioner at her responsibility.

I have heard counsel for the parties, perused the paper-book particularly the orders impugned.

The Courts below have recorded consistent findings against the petitioner that he was duly served in the case through his daughter Baljit Kaur. The trial Court in para 14 of the order dated 24.07.2015 has taken note that the respondent/plaintiff examined Harmail Singh RW-1 in whose presence summon of Piara Singh issued for 04.06.2005 was served upon Baljit Kaur who received the summon at her own responsibility and the said summon is Ex.RW1/A.

Counsel for the petitioner has not pointed out any materials on record or facts elicited in cross examination of Harmail Singh RW-1 that his testimony is not worthy of credence and reliance to prove the factum of

service of summon by service upon adult family member of Piara Singh. This apart, proceedings conducted by the Court and processes served by the serving officials of the Court in discharge of their official functions are presumed to be correct. No such plea was raised by the petitioner that summon issued by the trial Court in the suit for 04.06.2005 does not bear endorsement of Baljit Kaur daughter of the petitioner. Baljit Kaur did not appear in the witness box to deny the factum of service. There is nothing on record suggestive of the fact that Baljit Kaur and the petitioner was not in contact during stay of the petitioner in Canada. It is also not the plea that Baljit Kaur is not on good terms with the petitioner much less having interest adverse to the petitioner. As a matter of fact, the petitioner did not appear in the witness box to support his case set out in the application. Rather, he examined Harwinder Singh his son-in-law and attorney on his behalf. The very fact that the petitioner did not raise an issue with regard to service upon Baljit Kaur when otherwise report on summon Ex.RW1/A and testimony of Harwinder Singh are sufficient to establish that the petitioner was duly served in the case in compliance of Order 5 Rule 15 CPC. A relevant extract therefrom reads as follows:-

“15. Where service may be on male member of defendant’s family.—
When the defendant cannot for any reason be personally served and has no agent empowered to accept service of the summons on his behalf. service may be made on any adult male member of the family of the defendant who is residing with him.”

As the petitioner was duly served in compliance with the procedure prescribed under Order 5 Rule 15 CPC, contention of the petitioner that he was not served in the case is highly misconceived and rightly rejected by the Courts below.

Another important aspect of the matter is that the decree was passed on 09.06.2006 but the application for setting aside ex parte judgment and decree was filed on 10.05.2011. Under Article 123 of the Limitation Act, 1963, the limitation is a period of 30 days from the date of decree in case the defendant is served otherwise it would be 30 days from the date of knowledge of the decree. In the case at hand, the petitioner was duly served on the basis of summons issued for 04.06.2005 received by his daughter Baljit Kaur. The limitation for filing an application under Order 9 Rule 13 CPC would be 30 days from 09.06.2006. As such application filed by the petitioner in the year 2011 is clearly barred by law of limitation as the same was filed almost five years after expiry of the prescribed limitation. In this view of the matter, findings recorded by the Courts below deciding the question of limitation against the petitioner are liable to be affirmed and ordered accordingly.

For the foregoing reasons, the petition fails and is dismissed in limine.

NOVEMBER 10, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no