

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

CR No. 8029 of 2017(O&M)

Date of decision: 16.11.2017

Mukesh Kumar through his LRs Mohit and othersPetitioners

VERSUS

Virender and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rao Ajender Singh, Advocate for the petitioners.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 31.08.2017 passed by the Civil Judge (Junior Division), Rewari whereby the application dated 10.8.2017 (Annexure P-1) filed by the petitioners is dismissed and file is consigned to the record room.

Counsel for the petitioners has submitted that the trial Court vide order dated 03.08.2017 passed order for service of the defendants through publication and the case was fixed for 31.08.2017. An application dated 10.08.2017 (Annexure P-1) was filed for deposit of publication charges and the Court by way of endorsement dated 10.08.2017 on the application directed for deposit of Rs.1500/- towards publication charges at own responsibility. The amount was deposited on 16.08.2017 as per the particulars mentioned in the application itself. It is further submitted that as the petitioner (now represented by his LRs) complied with the order of the Court by deposit of Rs.1500/-, the petitioner cannot be made to suffer for failure to deposit balance amount of Rs.4,665/- on the basis of report made by Ahlmad of the Court. It is further submitted that the petitioner is

ready to make up deficiency, if any, with regard to publication charges for getting the respondents/defendants served by way of publication in terms of order dated 03.08.2017 of the trial Court.

Perusal of the application (Annexure P-1) and so also the order dated 31.08.2017 makes it evident that the petitioner (since deceased represented by his LRs) and others filed an application for deposit of publication charges on which the Court made an order for deposit of Rs.1500/- towards publication charges at own responsibility. An amount of Rs.1500/- was deposited on 16.08.2017. It appears that later, Ahlmad of the Court made a report that there is deficiency in publication charges to the tune of Rs.4,665/- and for that reason, notice by way of publication for service of the respondents/defendants could not be issued.

As has been rightly argued by counsel for the petitioner, the plaintiffs cannot be condemned for any such deficiency for the plaintiffs have complied with order dated 10.08.2017 directing deposit of Rs.1500/- qua publication charges. This apart, perusal of the order impugned would reveal that the Court has dismissed the application when otherwise the application for deposit of publication charges has already been allowed by the Court. It appears that the trial Court did not examine the matter in right perspective and ordered for consignment of file even without passing an order qua fate of the suit. It appears that the presiding officer is not well versed with the provisions of Order 9 CPC and, therefore, seriously erred in passing the order impugned.

For the foregoing reasons, the petition is allowed. The impugned order is set aside and trial Court is directed to proceed with the suit afresh for service of the defendants/respondents in case the petitioners

deposit the remaining amount qua publication charges within a period of 7 days from the date of receipt of certified copy of the order.

NOVEMBER 16, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no