

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-:-

C.R No. 2667 of 2012

Date of decision: 02.05.2018

M/s Ajay Iron Trading Company & Ors. ... Petitioners.

Vs.

State Bank of India ...Respondent.

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Parveen Kaushik, Advocate, for the petitioners.

Mr. Vikas Chatrath, Advocate, for the respondent.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest?*

KULDIP SINGH, J. (Oral)

Impugned in the present revision petition is the judgment dated 24.12.2011 passed by the learned Additional District Judge, Rewari, affirming the judgment dated 25.10.2007 passed by the learned Additional Civil Judge (Sr. Division), Rewari, vide which the application filed by defendant Nos. 1 to 3 for setting aside the ex-parte judgment and decree dated 18.03.1996 passed by learned Additional Civil Judge, Rewari, was dismissed.

I have heard learned counsel the petitioners and perused the record.

Short controversy is that State Bank of India filed a suit in the Court of learned Additional Civil Judge (Sr.Division), Rewari against four defendants on 07.11.1988 for recovery of Rs.40275.60. In the said suit, as per the record, the defendants were not being served, therefore, registered

letter was sent, which was not received and period of 30 days had elapsed

and therefore ex-parte proceedings were initiated against defendant Nos. 1 to 3 and suit was withdrawn against defendant No.4. After recording ex-parte proceedings, the suit was decreed on 18.03.1996 i.e. after seven and half years. On 28.09.1996, an application was filed by the present petitioners stating that they were not personally served. The correct address of the applicant was not supplied by the plaintiff therefore ex-parte proceedings are illegal. On the other hand, plaintiff took the stand that defendants were not receiving the summons. The address of defendants given in the plaint is same as given at the time of taking of loan from plaintiff-bank. From the pleadings of parties following issues were framed:-

- “1. Whether the judgment and decree dated 18.03.1996 is liable to be set aside on the ground as alleged by the applicant? OPA.*
- 2. Whether the application is time barred? OPR.*
- 3. Whether the application is not maintainable the present form? OPR.*
- 4. Relief.”*

The learned Additional Civil Judge (Sr. Divn.) came to the conclusion that defendants were duly served, therefore, ex parte proceedings were rightly initiated. The findings were affirmed in the appeal.

Learned counsel for the petitioner has vehemently argued that in this case earlier the report was received on the registered letter that the defendants are not residing in the said village, therefore, correct address was ordered to be supplied. However, again the registered letter was sent on the same address and it was not received back served or unserved as reflected in

the order dated 05.09.1992. Consequently, the Court passed the order on 29.01.1993 proceeding defendant Nos. 1 to 3 ex parte. The trial Court has taken into consideration the fact that the present petitioners had given the address in the loan documents and that on the same very address summons were sent. It was also noticed that defendants had ancestral residential house in village Bilaspur. They had also agricultural land there. They are running a school in Village Bilaspur since 1999. The construction of the building of school was started in the year 1998, which shows that the address was correct. Learned counsel for the petitioner further argued that the address was same in the year 1993 when the ex-parte proceedings were initiated.

It is contended that since earlier report was received that defendants are not residing at the given address, therefore, the Court should have resorted to substitute service.

Learned counsel for the bank on the other hand argued that even in the application before the trial Court, lower appellate Court and before this Court, the same address of village Bilaspur has been given.

After going through the findings of two Courts below, I am of the view that it has been found by both the Courts that defendant-Shakuntala Devi had ancestral residential house in the Village Bilaspur. She was also having an agricultural land there and was off and on coming to the village to look after the residential house and ancestral property therefore the address of Bilaspur was at least one of the addresses where she was living. It cannot be assumed that ancestral residential house was lying locked for all the times. The fact that later on, the present petitioner

constructed school in village Bilaspur and are running the same since 1999. This shows that they have roots in village and therefore registered letter was rightly sent to the said address. It being so, there is no illegality or infirmity in the impugned judgment passed by both the Courts below.

Accordingly, the present revision petition is dismissed.

May 02, 2018
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(KULDIP SINGH)
JUDGE

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