

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

**CR No.2700 of 2017
Date of Decision:30.01.2018**

Pala and others

...Petitioners

Versus

Scheduled Caste Land Owning Society Ltd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Ajay Jain, Advocate for the petitioners.
Mr.V.D.Sharma, Advocate for respondent No.1

ANIL KSHETARPAL, J. (ORAL)

Defendants Nos.40, 46 and 47-petitioners are in the revision petition against the order dated 22.4.2015, whereby they were proceeded ex parte by the learned trial court on the basis of report of refusal submitted in the court by a process server.

Defendants-petitioners filed an application for setting aside the ex parte proceedings on 28.3.2017. The learned trial court, after noticing that each of the defendant-petitioner has been issued summon on three occasions, has been dismissed the application. The learned trial court has noticed as under:-

“In order to appreciate the averments of both the parties, it is desirable to go through the summons issued to the applicants by the court for various dates of hearing. The applicant Ved son of Jeeta has been summoned thrice vide summons dated 3.12.2004, 22.4.2014 (wrongly typed) and 21.5.2014. The perusal of report upon summons would reveal that the summons dated 3.12.2014 was received back served through uncle of applicant Ved son of Jeeta. Subsequently, vide summons dated 22.4.2015, the report of refusal on the part of

the wife of applicant Ved is present. Similarly on 21.5.2014 also the summons were received with the report of refusal. However, Ved has not iterated any words in report of summons dated 3.12.2014 & 21.5.2014. He does not challenge the authenticity of the report of process server on those summons. For this reason, it is clear that vide summons for appearance on 3.12.2014, the applicant Ved son of Jeeta had due knowledge about the pendency of the present suit.

Another applicant Rishi son of Dana Ram has also been called through summons issued on 3.12.2014, 22.4.2015 and 21.5.2015. the summons dated 3.12.2014 were received back served through the mother of applicant Rishi. Service upon any adult family member is a valid service as per provisions of Code of Civil Procedure. Here also the applicant Rishi has not iterated a single word regarding the summons of dated 3.12.2014. It means that he did not challenge the report of process server. For this reason, it is also established that Rishi had also knowledge of present suit as per the summons dated 3.12.2014.

In same manner, applicant Pal son of Phoola was called through summons for three dates of hearing i.e. 3.12.2014, 22.4.2015 and 21.5.2015. The summons for appearance on 3.12.2014 have been received back served through the brother of Pal Singh. It is valid service, as per the provisions of C.P.C., as brother is an adult family member of Pal son of Phoola. It is also noted that one of the brother of applicant Pal namely, Satpal son of Phoola was served personally with the summons on apperance dated 13.12.2014. The above named Satpal is appearing as defendant No.39 in the present suit. For this reason, it is clear that applicant Pal had knowledge about the pendency of the present suit.”

Summons were sent to other defendants. The court has further noticed that the other defendants, who are 86 in number and residents of the same village, have been appearing in the case and contesting the suit. The court has further noticed that the Scheduled Caste Land Owning Society has filed a suit against unauthorised occupants who are 86 in number and the trial of the case is being delayed on one pretext or the other.

Learned counsel for the petitioner has submitted that while proceeding ex parte, the court did not comply with the procedures as prescribed under Order 5 Rule 17 and under Order 5 Rule 19 of the Code of Civil Procedure ('CPC' for short). He has further submitted that as per Order 5 Rule 17 CPC, on refusal, the summons were required to be pasted at the premises. A look at the report dated 8.4.2015 clearly proves that the summons were pasted at the outer door of the house, where these defendants were residing. Therefore, there was sufficient compliance of Order 5 Rule 17 CPC.

Next argument of the learned counsel for the petitioners is that there is non compliance of Order 5 Rule 19 CPC. He submits that summons have not been verified by the serving officer on oath. In the considered opinion of this Court, the argument is factually incorrect. As per the procedure adopted, the serving officer, while returning the summons, gets an affidavit attested, which is printed on the summons by way a rubber stamp and that affidavit dated 13.4.2015 is available on the report of refusal.

Learned counsel for the petitioners has also submitted that revision petitioners or their houses were not identified by any independent

person. A look at the summons, copies whereof have been produced, would prove that Chowkidar of the village accompanied the process server and he had duly identified the petitioners and their houses.

In view thereof, there is no scope for interference with the impugned order passed. However, petitioners shall be entitled to join the proceedings henceforth to defend the suit.

Dismissed.

30.01.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No