

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

C.R No. 3156 of 2018 (O&M)
Date of decision : September 06, 2018

M/S Kamal Tractors

..... Petitioner

v.

Shri Rajiv Rastogi

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Alok Mittal, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for the respondent.

Ajay Tewari, J (Oral)

C.M No.13353 CII of 2018

This application is allowed and the affidavit is taken on record.

CR No.3156 of 2018

This revision petition has been filed against the concurrent orders of the Courts below rejecting an application under Order 9 Rule 13 of the CPC filed by the petitioner.

Admitted facts are that the property in dispute was let out to a partnership firm M/S Kamal Tractors. In the year 1990, a new firm, namely, M/S Shree Motors Pvt Ltd, came into existence. In that firm, there was some change in the constitution also though the principal partner in both the firms was admittedly Shri Bhagwan Mittal. The respondent filed a petition

for eviction on the ground of non payment of rent. Summons were issued and they were returned back with the endorsement by the Process Server that when he went to the site in dispute, he met Shri Bhagwan Mittal who refused to accept the summons by stating that these should be in the name of M/S Shree Motors and not M/S Kamal Tractors. The Rent Controller passed the following order on 4.8.2007 :-

“ Notice sent to the respondent received back with the report of refusal. Case has been called several time since morning but none has appeared on behalf of respondent. However, yet as an abundant caution respondent be served through munadi for 22.8.2007.”

On that date, the Process Server reported that when he went to get the proclamation effected, he could not find any Munadi Karta in Sector 15 and so he went and got one Munadi Karta Leela Ram from village Ajronda and paid him ₹ 40/- to make the necessary proclamation, and after the necessary proclamation he also affixed a copy of the summons at House No.1093/15. It was thereafter that exparte proceedings were taken and the petition was allowed. The petitioner filed an application for setting aside the exparte proceedings stating that no service was ever effected upon it and it had infact came to know about the orders only when it was served in the execution petition and it, therefore, prayed that exparte proceedings be set aside. Both the Courts below having rejected the plea, the present petition has been filed.

Counsel for the petitioner has argued that actually these entire proceedings are vitiated because they have been managed by the respondent. He has argued that on the date of the alleged refusal, no witness was cited but on the date of the proclamation, one witness was cited but he did not append his signatures. He has further argued that as a matter

of fact four separate (though adjacent) premises were taken on rent by M/S Kamal Tractors-which has turned into M/S Shree Motors Pvt Ltd, and there is litigation pending in all the cases. In the other cases also summons were sent in the name of the previous firm i.e M/S Kamal Tractors but the petitioner had always appeared. He has pointed out that right from 1990 on numerous occasions, rent was paid to the respondent from the account of M/S Shree Motors; the respondent well knew that the firm had changed and in fact having accepted the rent he would be deemed to have accepted the new firm i.e M/S Shree Motors as his tenant. He has also pointed out that in an earlier case, the respondent had filed a petition by impleading both M/S Kamal Tractors and M/S Shree Motors as respondents but had later on amended the petition to remove M/S Shree Motors on the ground that they were sub tenants and that the respondent did not recognize their status. As per the learned counsel, all these facts clearly show that service was not validly effected upon the petitioner.

On the other hand, counsel for the respondent has argued that on the date when summons were first sought to be served, a Process Server had recorded that Shri Bhagwan Mittal had refused to accept the summons on the pretext that now M/S Shree Motors was in occupation and the summons could have been issued in the name of that firm. As per him, there was no way that that Process Server would know these things unless the same were disclosed to him by Shri Bhagwan Mittal. He has further argued that neither Order 5 Rule 20 CPC nor Order 5 Rule 20 CPC mandate that refusal or affixation or proclamation have to be witnessed by some body. He has further argued that even though Order 9 Rule 13 CPC mandates that those exparte proceedings which have arisen in a case where

service has not been effected have to be recalled yet the proviso thereto clearly lays out that if the Court is convinced that the defendant had notice of the date, exparte proceedings would not be set aside even if there is irregularity in service. In sum and substance the argument of counsel for the respondent is that the report of the first summons clearly indicates that the Process Server had met Shri Bhagwan Mittal and once that was so, the orders of the Courts below are perfectly justified.

In my opinion, arguments of counsel for the respondent carry more weight. The crucial determinant in this case is that the Process Server on the first occasion had correctly reported that now the firm had changed and instead of M/S Kamal Tractors M/S Shree Motors Pvt Ltd had come into existence. Had the Process Server not met with Shri Bhagwan Mittal, he would have no means of knowing these facts. Consequently, proviso to Order 9 Rule 13 CPC has been correctly applied by the Courts below. Resultantly, finding no merit this petition is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

September 06, 2018
`kk'

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No