

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

214

CR-4190-2014

Date of Decision:22.03.2018

Mehar Singh

.....Petitioner

Versus

Mukhtiara and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Jagdish Manchanda, Advocate,
for the petitioner.**

**Ms. Monika Arora, Advocate and
Mr. Pritam Saini, Advocate,
for respondent Nos.2 to 6.**

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India, impugning the order dated 30.01.2014 (Annexure P-8) passed by learned Civil Judge (Senior Division), Kurukshetra, whereby the learned civil court had allowed the application filed by the respondents-defendants under Order 9 Rule 13 CPC and accordingly set aside the ex parte decree dated 11.04.2005.

Briefly stated, petitioner-plaintiff has filed a suit for possession with the consequential relief of mandatory injunction against the respondents-defendants of the property detailed in the plaint. Learned counsel for the petitioner has argued that in the suit so filed by the plaintiff, the respondents-defendants appeared through their counsel Mr. R.C. Mehta,

Advocate, on 22.03.2004, who sought an adjournment to file the written

statement. Thereafter, the said counsel appeared at three different times. He filed his memo of appearance on 22.03.2004 and since none has put in appearance on behalf of the defendants, therefore, the civil court had no option except to initiate ex parte proceedings against the defendants. Accordingly, ex parte decree dated 11.04.2005 was passed against the defendants. Resultantly, on the basis of this decree dated 11.04.2005, the plaintiff(DH) has filed the execution application and the executing court had allowed the execution proceedings on 29.01.2007 and warrant of possession was issued against the defendants. The executing court provided police help to the plaintiff so as to secure possession of the suit land. On the basis of possession so delivered to the petitioner-plaintiff, the plaintiff had raised construction over it and it is thereafter, the defendants moved an application under Order 9 Rule 13 CPC for setting aside the ex parte decree dated 11.04.2005. The said application was allowed by the learned civil court vide order dated 30.01.2014.

Learned counsel for the petitioner has argued that the impugned order dated 30.01.2014 has been passed in blatant violation of the evidence/record available on file. In the suit so filed by the petitioner-plaintiff, the respondents-defendants were duly served and on their behalf Mr. R.C. Mehta, Advocate, had appeared and filed his memo of appearance. The judgment and decree dated 11.04.2005 has already been executed and the respondents-defendants have intentionally avoided appearance before the trial court despite the fact that they were aware of the proceedings pending before the civil court. After getting the decree dated 11.04.2005 executed, the petitioner-plaintiff has raised construction over it. The respondents-defendants were given as many as five opportunities to file the

written statement and when they failed to file written statement, they were rightly proceeded against ex parte. Therefore, the trial court should not have set aside the ex parte decree, as ample opportunities were granted to the defendants.

On the other hand, learned counsel for respondent Nos.2 to 6 has argued that the defendants had never authorized Mr. R.C. Mehta, Advocate, to appear in the case. No power of attorney was ever executed by the defendants. So far as memo of appearance filed by Mr. Mehta, Advocate is concerned, it was never signed by the respondents and once it does not bear signatures of the party, such appearance is unauthorised and has no relevance. He has further argued that even otherwise the memo of appearance if filed, is only for a single date, but fact remains that the defendants had never given such authority even to Mr.R.C. Mehta, Advocate.

I have heard the learned counsel for the parties and find that there is no such material on record which shows that the defendants were ever served in the case. Moreover, summons allegedly served to the defendants are signed by the petitioner-plaintiff along with other witness Jaswinder Singh. Once the plaintiff himself is a witness to the summons it creates all serious doubt about a valid service. Moreover, there are no signatures or thumb impressions on the summons which may establish that the process server ever met Jagir Singh at the spot. The petitioner being interested person cannot sign the summons required to be served upon defendants. This creates serious doubt about service on defendants.

Therefore, this Court finds that there is no illegality in the order

dated 30.01.2014 (Annexure P-8) passed by learned Civil Judge (Senior Division), Kurukshetra.

Dismissed.

March 22, 2018
seema

(HARI PAL VERMA)
JUDGE

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