

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

CR-4604-2016 (O&M)

Date of decision : 22.2.2018

Mam Chand

..... Petitioner

Versus

Jai Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Parminder Singh, Advocate for the petitioner.

Mr. Himanshu Sharma, Advocate for respondent No. 1.

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 order dated 5.10.2012 (Annexure P-4), passed by learned Civil Judge (Senior Division), Ambala. Further impugned is the order dated 13.7.2016 (Annexure P-6), passed by learned Civil Judge, (Junior Division), Ambala, vide which an application filed by the present petitioner -defendant No. 1 for setting aside the ex-parte proceedings was dismissed.

Heard.

It comes out that plaintiff-respondent No. 1 filed a suit for recovery of Rs. 3.00 lacs along with interest against the petitioner-defendant No. 1 and his two brothers namely Ratna Ram and Phulla Ram on account of damages. Summons were issued to defendants No. 1 to 3. On 5.10.2012 a report of refusal was received that defendants have refused service. Hence, they were proceeded ex-parte vide order dated 5.10.2012. The case was then fixed for ex-parte evidence. The same is now complete and now the case is fixed for arguments.

An application has been filed by defendant No. 1-petitioner for setting aside the ex-parte proceedings, the same has been dismissed vide order dated 13.7.2016, passed by learned Civil Judge (Junior Division), Ambala.

A perusal of the order dated 5.10.2012, passed by learned Civil Judge (Senior Division), Ambala shows that it was noticed that report of refusal has been received. Photocopy of the original summons have been placed on file (Annexure P-3), which shows that as per report of process server, he went to the spot, Mam Chand-petitioner/defendant was not available. His wife Surji and son Sunil Kumar were found available who refused to accept the summons and did not allow the summons to be affixed. No body witnessed the summons.

I am of the view that report of refusal is not by defendant No. 1 but his wife and son who refused to accept summons. Nobody was there to witness the summons, not even the plaintiff. Therefore, it cannot be said that the process server know and met met the wife and son of defendant-petitioner personally. This Court is to caution against the plaintiff obtaining ex-parte judgment.

Learned Civil Judge (Senior Division), Ambala in the order dated 5.10.2012 did not notice that refusal is in fact by the wife and son of defendant No. 1-petitioner and not by defendant No. 1 himself.

In the circumstances, another effort should have been made to effect the personal service or resort to the substitute service which was not done and all the defendants were proceeded against ex-parte.

I am of the view that in these circumstances, when the suit is

for damages, defendant-petitioner should be granted an opportunity to defend his case and put his version before the Court to ensure that judgment on merit is passed.

It being so, present revision petition is allowed and the orders dated 5.10.2012, (Annexure P-4) and the order dated 13.7.2016, (Annexure P-6) passed by learned Civil Judge (Senior Division), Ambala are hereby set aside. Defendant No. 1-petitioner is allowed to file written statement and contest the suit on merits. Since the suit has now become about 5-1/2 years old, trial Court is directed to grant short adjournments and dispose of the same expeditiously.

In view of above, petition stands allowed.

(KULDIP SINGH)
JUDGE

22.2.2018

preeti

Whether speaking / reasoned
Whether Reportable:

Yes
No