

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

Civil Revision No.4410 of 2014

Date of decision: May 08, 2018

Harnek Singh

...Petitioner

Versus

Deepak Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Brar, Advocate
for the petitioner.

Mr.B.S.Sidhu, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner Harnek Singh has filed this revision petition against respondent Deepak Kumar under Article 227 of the Constitution of India for setting aside order dated 18.07.2013 passed by learned Addl. Civil Judge (Senior Division), Gidderbaha, vide which the application under Order 9 rule 13 CPC to set aside ex-parte decree dated 30.11.2004 was dismissed and appeal against that order was also dismissed by learned Addl. District Judge, Sri Muktsar Sahib, vide judgment dated 26.05.2014.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Deepak Kumar filed suit on 01.08.2003 against Harnek Singh for recovery of ₹2,96,000/- on the basis of pronote and receipt. As per the judgment placed on record, notice of the suit was issued to the defendant, who did not appear to contest the suit despite his personal service and ultimately, he was proceeded against ex-parte. Learned Addl. Civil Judge (Sr. Divn.), Gidderbaha vide judgment dated 30.11.2004, passed ex-parte decree with costs for the recovery of ₹2,96,000/- along with interest @ 6% per annum from the date of filing of the suit till the date of realization of the decretal amount. The defendant filed application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree passed in the civil suit on 30.11.2004 by stating that applicant was never served in the above-said case in any manner nor he was conversant with the fact of pendency and decision of the said suit and it appears that the report of service of the defendant has been manipulated by the plaintiff in connivance with the serving agency of the Court. The defendant was never served in any way. It is also the case of the applicant that he came to know about 7 days back that warrant of sale of his property has been issued by the Court and on coming to know the said fact, it has come to the knowledge of the applicant that above-stated ex-parte decree has been passed against him on the basis of false manipulated and fabricated report of service of applicant-defendant.

This application has been typed on 03.02.2009, which is clear from the record and seven days earlier the applicant came to know about the ex-parte decree, meaning thereby, the applicant came to know about ex-parte decree in the last week of January 2009.

Learned Addl. Civil Judge (Sr. Divn.), Gidderbaha, after taking

evidence of the parties, dismissed the application vide order dated 18.7.2013. For disposal of said application, learned Addl. Civil Judge (Sr. Divn.), Gidderbaha, framed following issues:-

1. *Whether the applicant/JD is entitled for setting aside judgment and decree dated 30.11.2004 as prayed for? OPA.*
2. *Whether the application is within limitation? OPA*
3. *Whether the applicant/defendant was personally served in the main civil suit No.360-I of 01.08.2003 decided on 30.11.2004? IOPR*
4. *Relief.*

The applicant Harnek Singh examined himself as AW-1 whereas respondent-plaintiff Deepak Kumar stepped into witness box as RW-1 and closed the evidence. Thereafter, vide impugned order, application was dismissed. An appeal was filed and learned Addl. District Judge, Sri Muktsar Sahib, dismissed the same vide judgment dated 26.05.2014.

At the time of arguments, learned counsel for the petitioner mainly argued on one point that onus to prove issue No.3 was upon the respondent-plaintiff that defendant was personally served in the main civil suit decided on 30.11.2004 whereas learned counsel for the respondent argued that onus to prove issue no.1 was upon present petitioner i.e. whether, he is entitled for setting aside of judgment and decree dated 30.11.2004.

The perusal of the record shows that process server has made the report regarding personal service of present petitioner-defendant Harnek Singh and his thumb impression is also stated to be affixed on the report. In this report, it is also written that copy of plaint etc. has also been given.

There is report of the process server regarding the personal service of the

present petitioner Harnek Singh and this report has been duly atested. Learned counsel for the petitioner argued that notice and report have not been proved as per law as no process server has been examined.

The perusal of the record further shows that as per report of process server, the defendant has been served personally and the summons and report, are on the file and notice has been served while performing official duties by the process server and this report has been relied upon by the Court during the proceedings. There is thumb impression stated to be of present petitioner Harnek Singh. If Harnek Singh says that he has not been personally served, then he could easily prove this fact by getting compared the thumb impression but he has not produced any evidence on record to show that he was not personally served. The onus firstly lies upon the petitioner to show that he has not been personally served i.e. not his thumb impression on the notice and if he succeeds in showing that it is not his thumb impression, then the onus shifts to respondent-plaintiff but the present petitioner has not made any effort to get his thumb impression compared with the thumb impression on the notice. Secondly, this application has been filed on 02.03.2009 i.e. beyond the period of limitation of 30 days.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***Sushil Kumar Sabharwal vs. Gupreet Singh, 2002 (3) RCR (Civil) 431***. I have gone through the above-cited judgment and the same having distinguished facts, will not apply in the present case, as in that case, there was report of refusal by the process server and there was no affixation of copy of summons and plaint on the wall of the shop

and it is also held that refusal and affixation of summons and copy of plaint

on the wall should have been witnessed by persons who identified the defendant and his shop and witnessed such procedure, whereas in the present case, thumb impression is stated to be of present petitioner on the notice, which has not been got compared to show that it was not his thumb impression.

In view of the above discussion, I find that the findings given by both the Courts below are correct. No illegality has been committed by lower Courts nor evidence has been misread. In no way, the findings can be held as perverse or against the evidence. Therefore, the impugned order dated 18.07.2013 passed by learned Addl. Civil Judge (Senior Division), Gidderbaha and judgment dated 26.05.2014 passed by learned Addl. District Judge, Sri Muktsar Sahib, are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

May 08, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No