

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.443 of 2017 (O&M)
Date of Decision: 11.05.2018

Pawan Kumar

..... Petitioner

Versus

Rajinder Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Hemant Saini, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.

Defendant No.2-petitioner is in the revision petition against dismissal of his application for setting aside the ex parte judgment and decree dated 04.01.2007 affirmed in appeal by the learned First Appellate Court.

Some facts are required to be noticed. Raj Rani, defendant No.1 in the civil suit was owner of the property in dispute. She executed a registered sale deed in favour of petitioner-defendant No.2, Pawan Kumar on 10.01.2003 on receipt of sale consideration and possession was delivered. It is a semi constructed plot. The plaintiff-respondent Rajinder Kumar claiming to be tenant on the basis of rent note dated 27.10.2000 filed a civil suit on 24.02.2006 for permanent injunction. It was pleaded that Raj Rani had executed a rent note through which the property in dispute was given on lease @ Rs.1200/- per month and Raj Rani has

received an advance of Rs.1,00,000/- at the time of execution of the rent note. It was further pleaded that Rs.200/- per month is the rent payable whereas Rs.1,000/- per month is to be adjusted against the advance. Raj Rani, defendant No.1 appeared pursuant to the notice issued whereas notice issued to defendant No.2 was received back with a report of refusal. Report of refusal was signed by Davinder Kumar as a witness who is brother of Rajinder Kumar, the plaintiff in the suit and respondent No.1, herein. Sucha Singh, the process server made a report of refusal. The Court ordered that the petitioner-defendant No.2 to be served through munadi-local proclamation by beat of drums. The petitioner was directed to appear on 24.03.2006. On careful reading of the report of munadi proves that it was entrusted to the aforesaid Sucha Singh, process server, who is alleged to have carried out the munadi by beat of drum and loud voice in the area. Satinder Singh had signed the report as a witness of the munadi having been carried out. On the basis of the aforesaid report, ex parte proceedings were taken against defendant No.2-petitioner. Raj Rani, defendant No.1 filed a written statement choosing not to contest the suit. The suit against Raj Rani, defendant No.1 was withdrawn on 25.03.2006. After the ex parte proceedings, civil suit was decreed on 04.01.2007.

Respondent No.1, Rajinder Kumar served a caveat on the petitioner dated 18.03.2009 which was received on 20.03.2009 claiming that he has got a judgment and decree in his favour. Still further, Rajinder Kumar, respondent No.1 also filed a police complaint as he was trying to raise some construction which was objected to by the petitioner herein. Ultimately, a FIR was registered and in criminal case, petitioner has been acquitted vide judgment dated 05.06.2015. The petitioner on coming to

know of the ex parte judgment and decree filed an application for setting aside the same under Order 9 Rule 13, CPC. The application was contested. Parties were allowed to lead the evidence. Both the Courts below have dismissed the application and refused to set aside ex parte decree.

Learned counsel for the petitioner has submitted that the judgments of the Courts below are erroneous as Sucha Singh, the process server who submitted a report of refusal on the summons and also carried out the munadi i.e. local proclamation, has not been examined. He has further submitted that Satinder Singh who was witness of the munadi has submitted that his signatures were obtained on the pretext that summons have been sent to him. Satinder Singh has further stated that his signatures were obtained when the report of the munadi was blank and thereafter report was written. On the other hand, learned counsel for the respondent has vehemently contended that both the Courts below have examined this issue in detail and therefore, this Court should not interfere with the finding of fact.

This Court has considered the submission and with the able assistance of learned counsel for the parties has gone through the paper book.

Learned Courts have overlooked certain startling facts.

First report of refusal dated 13.03.2006 is witnessed by none other than the brother of Rajinder Kumar i.e. Davinder Kumar. It is apparent that Sucha Singh, the process server rather than performing his duty honestly was playing in the hands of one of the interested party. The Court appoints process servers to perform their duties diligently and

independently. The Courts should be careful whenever a report of refusal is received. The report of refusal to receive summon must carefully examined. The trial Court does not appear to have applied its mind. In routine, the petitioner was ordered to be summoned through local proclamation. At that stage, Court was further required to entrust the job of local proclamation to some other process server so as to ensure that sincere effort is made to serve the respondent who has refused to serve the summons. However, unfortunately, the munadi was entrusted to Sucha Singh who again submitted a report of munadi having been carried out.

Sucha Singh, the process server was not produced by the respondent to prove the report of refusal and the report of fact that the munadi was carried out. Once there is a report of refusal, it is mandatory that process server be summoned in the Court and examined while giving opportunity to the applicant who has sought setting aside ex parte decree to cross-examine the process server. It is the duty of the party who is defending the ex parte judgment and decree to examine the process server. In the present case, unfortunately, Sucha Singh has not been examined.

Still further, the Courts have overlooked the fact that Davinder Kumar who was the witness of report of refusal on the summons is in fact the brother of the plaintiff and hence, interested party. Still further, Satinder Singh has appeared for petitioner-defendant No.2 and has stated that his signatures were obtained when there was no report of the munadi proceedings and it was later on written. In these circumstances, the Courts below ought to have carefully examined the evidence available on the file and thereafter adjudicated upon the application under Order 9 Rule 13, CPC. A owner is sought to be deprived of the possession. Further, it is

well settled that the party to the litigation should be given proper opportunity to contest the case on merits.

In view of the discussion made above, the orders under challenge are set aside. Ex parte judgment and decree dated 04.01.2007 is also set aside and suit is restored to its original number.

Learned District Judge, Amritsar is directed to conduct investigation in the entire matter keeping in view particularly the conduct of Sucha Singh and submit the report to this Court, within a period of six months.

Revision petition is allowed.

11.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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