

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4802 of 2014 (O/M)
Date of decision : 27.3.2018

M/s Car Scan Center and another Petitioners

Versus

State Bank of Patiala and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Harkesh Manuja, Advocate, for petitioners.

Mr. Nitin Thatai, Advocate, for respondent No. 1.

Mr. D.K. Singal, Advocate, for respondent No. 4.

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 ?

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KULDIP SINGH J.

Impugned in present revision is order dated 31.10.2012, passed by the learned Additional Civil Judge (Senior Division), Karnal, vide which an application filed by plaintiff through its partners, namely, Upinder Gupta and his wife Madhvi Gupta, under Order IX Rule 13 CPC, 1908, was dismissed. Also impugned is order dated 15.7.2012, passed by the learned Additional District Judge, Karnal, vide which appeal against said order was dismissed. The application before the trial Court was filed by M/s Car Scan Center through its partners Upinder Gupta as well as his wife Madhvi Gupta. However, present revision has been filed by M/s Car Scan Center through its partner Upinder Gupta.

I have heard the learned counsels for both the parties and have also perused the original lower Court file. It comes out that State Bank of Patiala had filed a suit for recovery of Rs. 4,30,000/- against M/s Car Scan

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Center, its partners Upinder Gupta, Madhvi Gupta, two other defendants, namely, Subhash and Satish Tyagi and Punjab National Bank. Defendant No. 4 appeared on one date and thereafter did not appear. Defendants No. 1 and 2 were not served. Therefore, on the application of plaintiff, they were served by way of publication in the English newspaper 'The Tribune, Chandigarh'. Since defendants No. 1 to 3 did not appear through publication, therefore, ex parte proceedings are conducted and ultimately suit was decreed.

The learned counsel for petitioner has argued that the trial Court erred in ordering the publication. It is contended that defendant No. 1 through its partner was never served and that the trial Court should have first proceeded with the provisions of Order V Rule 17 CPC, 1908, and should have ordered the affixation of summons. While ordering the publication, the Court has not recorded the satisfaction that defendants No. 1 to 3 cannot be served through ordinary service. Therefore, ex parte proceedings are bad in the eye of law and are liable to be set aside and consequently, judgment and decree is also liable to be set aside.

The learned counsel for petitioners has relied upon the authority of Apex Court in *Neerja Realators Private Limited Versus Janglu (Dead) through legal representative*, (2018) 2 Supreme Court Cases, 649, as well as Single Bench authority of this Court in *Sunil Kumar Versus Kewal Krishan and others*, 2017 (1) Law Herald, 145.

I am of the view that in view of the fact that it is proved that application has been filed after little less than one year after the personal knowledge about the decree. The application under Order IX Rule 13 CPC, 1908, was rightly dismissed.

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I have summoned the original lower Court file and original summons.

From the summons, it is clear that repeatedly summons were sent and that the same were being avoided on one or the other pretext. In the summons issued for 21.10.2005, one Suresh Kumar reported under his signatures and stamp of defendant No. 1 firm that Upinder Gupta is not present in the firm and has gone out of Karnal. Despite repeated visits, same report was made to Process Server by one or other official of defendant firm. In the summons for 12.1.2006, it is reported that despite repeated visits, it is being informed by servant that Upinder Gupta has gone out. In the summons for 27.3.2006, it was again reported that Upinder Gupta has gone out and Madhvi Gupta has nothing to do with the firm. More or less, similar reports were made at least on four occasions for summons issued for different dates. It is not possible that despite repeated visits by Process Server, every time both the partners were not found available in the said firm. Therefore, even the affixation would not have made any difference. Even though in the order proceeding ex parte, the Court has not recorded the finding from the report of the summons that this Court is satisfied that the service of defendants-petitioners was not possible in ordinary manner, therefore, the publication was ordered in a leading newspaper i.e. 'The Tribune English, Chandigarh', which is widely read, even then the order passed by the learned Additional Civil Judge (Senior Division), Karnal, further shows that Suresh Kumar examined himself as AW1 in application for setting aside ex parte proceedings stating that he is an Accountant of said firm and on one of the summons, as discussed above, he has made report in his own hands under the stamp of

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firm. Therefore, service by an Accountant of the firm would mean that the firm was duly served and firm had the knowledge about the pendency of the suit for recovery. It was for this reason that once present petitioners came to know that a recovery suit by the bank is pending, they started avoiding the summons by asking their employees to tell the Process Server that partners are not available. It also comes out that when Upinder Gupta was personally served for 31.5.2010 in the execution proceedings and despite that, he did not challenge the said judgment and decree from said date till 6.4.2011 i.e. for little less than one year when application for setting aside ex parte proceedings was pending.

I am of the view that there is no illegality or infirmity in the impugned order. This Court is satisfied that present petition was intentionally avoiding the service through ordinary manner. Therefore, in these circumstances, the service by way of publication was the only alternate left with the Court. Moreover, the application for setting aside ex parte proceedings was filed beyond the period of thirty days from the date of knowledge permitted under Article 123 of the Limitation Act, 1963. Hence, the application was rightly dismissed by the trial Court as well as the first appellate Court. There is no ground to interfere in the impugned order. Consequently, revision is dismissed. Since main case is dismissed, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

27.3.2018
sjks

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