

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

CR-5908-2016 (O&M)

Date of decision : 26.2.2018

Jaswant Singh

..... Petitioner

Versus

Sital Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Atul Jain, Advocate for the petitioner.

None for respondent.

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)

Heard.

Impugned in the present revision petition is the order dated 16.7.2016 passed by learned Additional Civil Judge (Senior Division), Sultanpur Lodhi vide which an application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the ex-parte judgment and decree dated 9.12.2006 in ***civil Suit No. 114 of 3.5.2006*** titled as ***Jaswant Singh versus Sital Singh*** was allowed.

It comes out that a suit for specific performance was filed on the basis of agreement to sell dated 23.1.2001, allegedly suffered by defendant-Sital Singh. It was stated in the application that defendant has gone abroad on 15.4.2002. His correct address was not mentioned and that he was not properly served.

Learned trial Court after framing the issues came to the conclusion that defendant had gone abroad before the filing of the suit. There were two crucial witnesses namely Harjit Singh, process server, who was examined as RW-1 and Daulat Ram, process server, who was examined as RW-2. Learned trial Court has discussed the evidence of both the process servers i.e., Harjit Singh (RW-1) and Daulat Ram (RW-2) and also examined their reports and found that though in the Court they had stated that they had gone to the house of defendant but in fact as per the report they had gone to the village and searched for Sital Singh-defendant and they were told that he has gone abroad. Harjit Singh, process server had effected the service in the execution proceedings and Daulat Ram process server had effected the service in the civil suit. The summons of Daulat Ram bear the report of Roshan-brother of Sital Singh-defendant. In the evidence, both the process servers have stated that they had met Paramjeet Kaur-wife of Sital Singh in the house. Learned trial Court has stated that witnesses have gone beyond the report. They had not reported that they had gone to the house of defendant where they met the wife of defendant or his brother – Roshan Singh. Therefore, the testimony of both the witnesses were discarded. In this case, substituted service was effected by way of service in the English newspaper, 'The Tribune'.

Learned trial Court came to the conclusion that defendant was not properly served therefore, ex-parte judgment and decree was set aside.

Learned counsel for the petitioner has argued that learned trial Court has observed that in this case, Roshan Singh as well as Amarjit Singh, attesting witnesses of the summons on the report of Daulat Ram, process server have not been examined. However, these were not required to be

examined by the plaintiff-present petitioner. The reports of the process servers and the statement are sufficient to prove that defendant was duly served. Paramjit Kaur-wife of Sital Singh-defendant has admitted that Roshan Lal-brother of defendant is living with them. Therefore, service on any member of the family is a proper service and for non-appearance, the substituted service was properly effected.

I am of the view that the reports of both the process servers i.e. Harjit Singh and Daulat Ram have been examined by the learned trial Court. Process Servers said something in the Court but something else is reported on the summons. Though, the signatures of Roshan Singh are there but Roshan Singh was not examined in the Court by the petitioner to prove that he had signed the summons for one or the other reasons.

Findings of fact have been recorded by the learned trial Court. Learned trial Court has adopted one line of reasoning and this Court does find any ground to differ with the same.

In view of above, no ground to interfere in the order dated 16.7.2016, passed by learned Additional Civil Judge (Senior Division), Sultanpur Lodhi, is made out in the present revision petition.

Dismissed.

(KULDIP SINGH)
JUDGE

26.2.2018
preeti

Whether speaking / reasoned
Whether Reportable:

Yes
No