

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.5995 of 2017
Date of Decision:16.04.2018

Parkash Chand

....Petitioner

Versus

M/s RSA Trading Co.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

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

RAMENDRA JAIN, J. (ORAL)

Through this petition under Article 227 of the Constitution of India, challenge has been laid to judgment dated 21.11.2016 (Annexure P-1) of the First Appellate Court, whereby order dated 15.03.2016(Annexure P-2) of the trial Court dismissing the application of the petitioner-defendant under Order 9 Rule 13 CPC for setting aside ex parte judgment dated 26.03.2013 was affirmed.

Briefly stated, the respondent-registered firm filed a suit for recovery against the petitioner, in which the petitioner did not appear despite his effective service. Therefore, he was proceeded ex parte.

The trial Court after holding ex parte trial against the petitioner-defendant decreed the suit of the respondent-firm in toto along with reduced rate of interest @ 8% per annum from the date of execution of pronote till realization vide judgment and decree dated 26.03.2013.

The petitioner moved an application under Order 9 Rule 13 CPC for setting aside the ex parte decree aforesaid against him before the trial Court, which after hearing both the sides was dismissed vide order dated 15.03.2016

(Annexure P-2).

Being aggrieved, the petitioner preferred an appeal before the First Appellate Court, which too was dismissed vide judgment dated 21.11.2016(Annexure P-1).

Learned counsel for the petitioner *inter alia* contends that the petitioner was never effectively served by the trial Court before proceeded him ex parte because at the relevant time, the petitioner was in jail. Even otherwise, alleged service of the petitioner in jail was not an effective one for the reason that copy of plaint and annexed documents were not supplied to him at the time of his alleged service in jail. Both the Courts below have failed to appreciate that the alleged service of the petitioner was not an effective service in view of the provisions of Order 5 Rule 24 CPC because no summon was sent to the Incharge of the Prison for service of the petitioner, where he was confined.

In support of his argument, learned counsel has relied upon the decisions in Media Coverage Pvt. Ltd. Vs. Harish Nagewala & ors., 2010(13) RCR (Civil) 715(Delhi), Hans Raj Vs. Lakhi Ram, 2005(1) PLR (Delhi) 20, Rajni Kumar Vs. Suresh Kumar Malhotra, 2003 AIR (SC) 1322, Manjari Vs. Ranjit Singh, 2007(2) AD (Delhi) 473, and State (NCT of Delhi) Vs. Ahmed Jaan, 2009(sup) AIR (SC) 695.

Having given anxious consideration to the submission made by learned counsel for the petitioner, I find that the instant petition is completely devoid of any merit for the reasons to follow.

A perusal of Annexure P-3 i.e. copy of the summon vide which the petitioner was served coupled with the report of the Process Server shows that service was duly effected upon the petitioner in jail. The receipt of the summon is specifically acknowledged by the petitioner by appending his signatures with date of receipt of the summon i.e. 19.12.2011. At that time, the petitioner did not

raise any objection or any protest not to accept service due to non-supply of copy of the plaint and documents annexed with the same. The petitioner accepted service of the notice without any such objection. It has been specifically mentioned in the notice that the suit for recovery of ₹36,47,500/- has been instituted against him under Order XXXVII CPC and the petitioner has been summoned to cause appearance within 10 days from the service thereof, failing which he would be proceeded ex parte. A discretion was also granted to the petitioner by the trial Court that he may obtain leave to defend on satisfying the Court by way of affidavit or otherwise that he has a valid defence in his favour on merit.

In view of above factual position of the case, it does not lie in the mouth of the petitioner that he was wrongly proceeded ex parte without complying with legal procedure, rather the petitioner by his own act and conduct is estopped to raise such objection.

As far as argument of the learned counsel for the petitioner regarding not sending notice directly to the Incharge of the Prison by the Court to effect service upon him is concerned, the same is meaningless for the reason that as and when service of the summon has to be effected on a person in prison, the Process Server approaches the Incharge of the prison, where the person is confined, who in turn allows the Process Server to effect service upon the concerned person. This is the general procedure, which is always followed. Sending of summons by the Court to the Incharge of the Prison as envisaged under Order 5 Rule 24 CPC does not speak as to in what manner, the Court has to send notice to the Incharge of the Prison. Therefore, sending the same through Process Server is a complete compliance of Order 5 Rule 24 CPC. That Apart, Order 5 Rule 18 CPC has laid guidelines about endorsement of time and manner of service. The Process

Server, who got effected service of notice upon the petitioner has specifically appended his certificate and endorsement on the summons that he after visiting Model Jail, Burail, Chandigarh, served the petitioner by giving him a copy of the summon and simultaneously obtained the signatures of the petitioner. Not only this, the Process Server has also appended his solemn affirmation about service upon the petitioner along with his aforesaid report. The facts and circumstances of the above-mentioned citations relied upon by learned counsel for the petitioner are not identical to the facts of the present, rather are distinguishable. Therefore, no benefit of the same can be given to the petitioner. No other point was raised by learned counsel for the appellant.

Therefore, considering overall facts and circumstance, it is evident on record that the petitioner was effectively served in jail.

In view of the discussion made above, this petition fails and is dismissed.

16.04.2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No