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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7184-2016 (O&M)
Date of decision : 7.5.2018

Joginder Kaur

..... Petitioner

Versus

Sukhwant Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Malkeet Singh, Advocate for the petitioner.

Mr. Rishu Mahajan, Advocate
for caveator-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 ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 28.9.2016 passed by learned Civil Judge (Junior Division), Phillaur, vide which an application filed by defendant No. 4-Sukhwant Singh (respondent No. 1) through his attorney and maternal uncle namely Jagjit Singh under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 was allowed.

Heard.

It comes out that in a civil suit filed by plaintiff-petitioner namely Joginder Kaur for declaration and possession against the defendants, Sukhwant Singh was arrayed as defendant No. 4. Said defendant No. 4-Sukhwant Singh was proceeded against ex-parte vide order dated 4.9.2013 passed by the learned Civil Judge (Junior Division), Phillaur and the suit was decreed ex-parte vide the judgement and decree dated

19.3.2014. Within 30 days i.e. 17.4.2014, an application was filed by defendant No. 4-Sukhwant Singh through his attorney Jagjit Singh.

Learned trial Court framed the issues and held that there was no proper service and, accordingly, set aside the ex-parte judgment and decree vide order dated 28.9.2016. A perusal of the file shows that defendant No. 4-Sukhwant Singh is a British citizen and is residing in United Kingdom (UK) for the last fifty years, though he use to come to India often. He had appointed his maternal uncle-Jagjit Singh as his power of attorney.

It also comes out that on 25.8.2013 when defendant No. 4-Sukhwant Singh was in India, Kuldeep Singh-Process Server went to his house; a woman came out and she was told about the summons. Thereafter, defendant No. 4-Sukhwant Singh did not come out. Kuldeep Singh, Process Server made a report of '*avoiding service*'. Accordingly, *munadi* was issued which was effected on 03.09.2013. The case was fixed for hearing on 4.9.2013 and on that day, defendant No. 4-Sukhwant Singh was proceeded against ex-parte.

Learned trial Court has taken into consideration that though defendant No. 4-Sukhwant Singh is a permanent resident of UK but his UK address was not mentioned by the plaintiff-Joginder Kaur. Further, the evidence of Kuldeep Singh-Process Server shows that he never met Sukhwant Singh-defendant No. 4 but he only met a woman who came out when he want to serve the summons. Therefore, Kuldeep Singh – Process Server cannot say whether defendant No. 4-Sukhwant Singh was avoiding service and he also could not say whether Sukhwant Singh was or was not in the house when he visited the house of defendant No. 4. The Court issued the *munadi*, a copy of which was not affixed on the

conspicuous place of the house and the same was not attested by a responsible person.

I am of the view that considering that there was no proper service and the fact that valuable rights of the parties are involved, the matter is otherwise required to be decided on merits.

Learned counsel for the petitioner has argued that in this case Jagjit Singh has annexed the photocopy of the power of attorney and that he did not appear in the witness box. Rather, Sukhwant Singh-defendant No. 4 himself appeared in the witness box.

I am of the view that even though one has given the power of attorney, he himself is always competent to pursue the matter. The execution of the power of attorney does not debar the executant from himself pursuing the litigation. Therefore, the authority of this Court in *Gian Singh versus Avtar Singh and others 2015 (1) RCR (Civil) 251*, is not attracted in the present case.

In view of the forgoing discussion, I do not find any illegality or infirmity in the impugned order dated 28.9.2016 passed by learned Civil Judge (Junior Division), Phillaur.

Dismissed.

Since, the present petition is dismissed, the miscellaneous application pending, if any, also stands disposed of.

7.5.2018
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(KULDIP SINGH)
JUDGE

Whether speaking / reasoned	Yes
Whether Reportable:	No