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

**CR No. 7466 of 2016
Date of Decision: 16.07.2018**

Jagdeep Singh

......Petitioner

Vs.

Bank of India and others

.........Respondents

CR No. 7470 of 2016

M/s Creative Printers and another

....Petitioners

vs.

Bank of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.D. Bawa, Advocate,
for the petitioners.

Mr. Anil Malhotra, Advocate,
for the respondent no. 1.

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AMOL RATTAN SINGH, J. (ORAL)

Learned counsel for the petitioners in these two petitions submits that the inference taken by the learned Courts below, vide the impugned orders, to the effect that simply because the matter had been referred to the Lok Adalat for decision, it was with the consent of the petitioner, is a wholly unfounded presumption, as would be visible from the orders of the learned Civil Judge (Junior Division), Chandigarh, up-till 11.04.2001, showing that the petitioner (Jagdeep Singh) and his co-defendants were not served, after which the first date before the learned Lok Adalat was June 20, 2001, where also it is stated that no compromise could be effected as the defendants did not come present, with the said order repeated on 28.07.2001, after which the matter was referred back to the court of the learned Civil Judge, where again even on 04.05.2002, it is recorded that the summons issued to the defendants under registered cover were received back unserved.

Eventually, vide the order dated 28.01.2002, they were ordered to be served through a newspaper, “Chardhikala”, after which they were held to have been deemed to be served and were proceeded against *ex parte,* with the decrees in question having been passed against the petitioner.

Mr. Bawa further submits that as a matter of fact the petitioner had shifted to the USA in 1998 and in fact even the address on which notices were stated to have been sent by registered cover, was not that of the petitioner or his co-defendants, with the actual address of the father of the petitioner (co-defendant), being House no. 631/1, Sector 40-A, Chandigarh, whereas the address given by the respondent-plaintiff in the memo of parties in the civil suit, was House no. 1802/1, Sector 34-D, Chandigarh.

He also refers to Annexure P-2 to submit that the process servers' report was not even with regard to having visited House no. 1802/1, but in fact House no. 1820/1.

Yet further, Mr. Bawa points to Annexure P-1, which is shown to be a copy of a “no dues certificate” issued by the respondent-Bank on 11.03.1998 as regards Term Loan Account No. 1532 and Credit Account No. 3055.

He further therefore submits that with that clearance certificate having been issued, there was no reason for the petitioner to give any change of address to the Bank.

On the other hand, learned counsel for the Bank submits that there was a 3rd loan account also, which the petitioner had not cleared and in respect of which in any case, he was to furnish the bank a change of address and therefore, the petitioner being served at a wrong address which was the only address available with the bank, cannot be attributed to any fault of the bank and consequently, the courts below have not erred in passing the impugned orders.

He further submits that even the document, Annexure P-1, is denied by the bank.

In rebuttal, Mr. Bawa submits that whether a 3rd loan account actually existed (which the petitioner wholly denies) and further, whether or not the document Annexure P-1 is a genuine document or otherwise, are a matter of evidence, which both parties would need to lead before the courts below, and consequently, with the petitioners' stand being that there were only two loan accounts operating, both of which he had cleared, non-service upon him of notices issued in the suits filed by the bank for recovery of the amounts, are not due to the fault of the petitioner, who had gone to the United States of America on 13.08.1998.

Having considered the aforesaid arguments, keeping in view the fact that the main plank on which the learned courts below have taken the petitioner to have knowledge of the pending suit, being that the matter was referred to the Lok Adalat, and it having been shown that the said reference was not on any consent given by the petitioner or by any representative of his, I do not see how the impugned orders are sustainable.

I also agree with learned counsel for the petitioner that as regards the existence of any other loan account, which according to the petitioner is a wholly fictitious loan created in his name, (if at all such an account exists), and whether or not the document Annexure P-1, showing clearance of the dues to the bank as regards two loan accounts, would be a matter of evidence to be led by both sides, which the learned Civil Judge would need to appreciate.

In view of the above, these petitions are allowed and the impugned orders passed by the Civil Judge (Junior Division), U.T., Chandigarh and the Additional District Judge, Chandigarh, in these two petitions, are set aside, with the applications under Order 9 Rule 13 CPC also allowed.

The learned Civil Judge would now proceed with the matter, from the stage that the written statement of the petitioner is to be filed, to the plaints in both cases, which would be filed within one month.

The parties would appear before the learned Civil Judge on 30.07.2018 either in person or through counsel.

Both the cases being extremely old, the suits having been instituted in the year 2000, that Court would take up and decide them on priority, they in any case being more than 10 year old.

July 16, 2018 **(AMOL RATTAN SINGH)**
nitin **JUDGE**

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