

CR No. 7374 of 2018

DECIDED ON: OCTOBER 30, 2018

GURDEVI

.....PETITIONER

VERSUS

BABITA & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Abhinav Aggarwal, Advocate
for the petitioner.

AVNEESH JHINGAN, J (ORAL)

The present civil revision petition has been filed under Article 227 of the Constitution of India, seeking quashing of order dated 09.08.2018 (Annexure P-5) passed by Civil Judge (Jr. Division), Karnal (for short 'trial Court').

2. Petitioner had filed a civil suit for declaration and joint possession with a consequential relief of permanent injunction. In the said suit, the respondents/defendants were proceeded ex-parte vide order dated 24.04.2017. Thereafter, an application was moved for setting aside the ex-parte order. The reasons stated in the application were that no summons were received by the respondents/defendants. The newspaper in which publication was done was not circulated in the vicinity where the respondents/defendants were residing. Further, the grievance raised was that defendants No.2 and 3 are minor and as per Order XXXII Rule 3 of the Code of Civil Procedure (for brevity 'the Code'), no application was made for appointment of guardian on behalf of minors.

3. The trial Court after considering the facts and perusing the documents on record came to the conclusion that the suit was filed against defendants No.2 and 3 through next friend and guardian, i.e., their mother Babita, who herself was defendant No.1. A specific finding was recorded that notices were never served upon defendants through ordinary manner. It was also noticed that the Court had ordered to serve notice through registered AD/speed post but as per the report of Ahlmad, petitioner/plaintiff never deposited the expenses of speed post. Thereafter, the publication was issued in Newspaper "Naya India" and defendants/respondents were ordered to be proceeded ex-parte. In such circumstances the ex-parte order was set aside. However, in order to avoid the unnecessary delay, defendants No.1 to 3 were directed to file written statement on or before 20.08.2018.

4. Learned counsel for the petitioner contended that the matter was being intentionally delayed by the respondents/defendants. He relied upon the report of Ahlmad to the effect that the mother of defendant No.3 stated that defendant No.3 was residing permanently with her brother at Rohtak. The learned counsel for the petitioner submitted that as per the address given in the application, the efforts were made to serve the defendant.

5. The contention raised by learned counsel for the petitioner lacks merit.

6. The finding recorded by the trial Court has not been disputed that the defendants were never served in an ordinary manner. From the perusal of the record, it is evident that in spite of the order of the Court, no expenses, for service through speed post, were deposited. It is a fact that no application,

under Order XXXII Rule 3 of the Code was made. The reliance on the report

of process server is of no help to the petitioner, as it nowhere stated that in absence of defendant No.3 the summon was served upon her mother.

7. The suit was at initial stage for filing written statement at the time of setting aside the ex-parte order, the Court in order to avoid delay ordered, that defendants No.1 to 3 shall file the written statement on or before 20.08.2018. Learned counsel for the petitioner has candidly submitted that the said directions have been complied with by the defendants and the suit, is now fixed for defence evidence.

8. No case is made out for interference.

9. The petition is dismissed.

OCTOBER 30, 2018
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*