

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

CR No.7988 of 2013(O&M)

Date of Decision: 27.08.2018

Rachna Mahajan and another

..... Petitioners

Versus

Devinder Kumar Mehta

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate
for the petitioners.

Mr. Munish Puri, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 21.07.2008 passed by Civil Judge (Junior Division), Pathankot, whereby the application under Order 9 Rule 13 CPC for setting aside the ex parte decree dated 11.11.1994 passed by Civil Judge (Junior Division), Pathankot was dismissed and for setting aside the order dated 05.10.2013 passed by Additional District Judge, Pathankot whereby the appeal filed by the petitioners against

the order dated 21.07.2008 was also dismissed by the Lower Appellate Court.

[2]. A civil suit for specific performance of agreement to sell dated 16.01.1986 was filed by Devinder Mehta against six persons namely Ashwani Kumar, Arun Kumar, Mrs. Partap Chand, Sukanya, Rakesh Kumar (minor) and Shakuntala Devi on 17.07.1989. The plaint of the suit was amended. Defendants No.7 and 8 were added i.e. Archana Mahajan wife of Vinod Kumar, resident of Bhadroya, Pathankot and Anil Kumar son of Gobind Ram, resident of Bhadroya, Pathankot. The added defendants were impleaded on the basis of sale deed vide which the land in question was purchased by them. In the sale deed of added defendants, the land was shown to be situated in Bhadroya, Tehsil Pathankot and address of defendants No.7 and 8 was shown to be Ishwar Nagar, Pathankot. The added defendants were impleaded on the address of village Bhadroya, where the land was situated.

[3]. When the process was issued to the added defendants, following order was passed on 04.03.1992:-

“PF/RC & AD not filed. Last chance given for filing PF/RC & AD. Put to 06.03.1992.”

Thereafter, PF was filed, but RC and AD were not filed and Sub Juge, 1st Class passed the order dated 06.03.1992 to

the following effect:-

“PF filed. However, RC and AD not filed. Now, summons to defendants No.7 and 8 be issued in ordinary way for 18.04.1992 and PF/RC if any be filed within 3 days.”

Summons of the added defendants No.7 and 8 were received back with the report that their correct addresses are required for effecting service. On 18.04.1992, following order was passed by the trial Court:-

“RC containing summons of defendants No.7 and 8 received with the report that their correct address is required for service. Like report is received regarding remaining defendants sent through ordinary xxxx (not legible). Correct addresses of all the defendants be filed along with RC/AD for 25.04.1992.”

[4]. Thereafter, on 25.04.1992, PF/RC & AD filed. Summons to defendants were issued for 30.05.1992. On 30.05.1992, registered covers containing summons of defendants No.7 and 8 were received with the report that they are not residing on the given addresses. Correct addresses of defendants No.7 and 8 were required to be filed on 06.06.1992. Thereafter, correct addresses were not filed and application under Order 5 Rule 20 CPC was filed by the plaintiff. Trial Court passed the order dated 06.06.1992 on the said application to

the following effect:-

“An application under Order 5 Rule 20 CPC filed for effecting substituted service. The application is supported by an affidavit. In the application and affidavit, it is alleged that last known address of defendants No.7 and 8 is the one which is given earlier. Earlier regd. covers to defendants No.7 and 8 were received with report that correct addresses be given. So service of defendant No.7 and 8 not possible in ordinary way. Defendants No.7 and 8 therefore required to be served through Daily Nawan Zamana, Jalandhar for 25.07.1992. Publication charges and PF within 3 days.”

In this way, publication was made and the petitioners were proceeded against *ex parte*.

[5]. Application under Order 9 Rule 13 CPC was filed by the petitioners to which no reply was filed by the decree holder as the suit was decreed *ex parte* vide judgment and decree dated 11.11.1994 passed by the Civil court. Petitioners remained unsuccessful even in appeal filed before the Lower Appellate Court.

[6]. Learned counsel for the petitioners relied upon **Smruti Pahariya Vs. Sanjay Pahariya, (2009) 13 SCC 338** and contended that once the Court found the service to be improper for want of correct address and the Court was not satisfied with

the address available on record, direction for substituted service in terms of Order 5 Rule 20 CPC was not proper as the same could have been ordered only after recording due satisfaction that there are reasons to believe that the defendant is keeping out of the way for the purpose of evading service or, that for any other reason, the service cannot be served in the ordinary way. In the absence of such recording of satisfaction, the provision in terms of Order 5 Rule 20 CPC could not be resorted to. Learned counsel further relied upon **Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atma Ram Kumar, (1993) 4 Supreme Court Cases 6** and contended that in the absence of any reply to the application under Order 9 Rule 13 CPC, averments of the application are required to be taken on the face value. Since, there was no denial to the averments made by the petitioners in the application under Order 9 Rule 13 CPC, therefore, the subject matter of the application must be taken to have been admitted.

[7]. Learned counsel also relied upon **Saroj Vs. Rajender Kumar, 2013(2) PLR 688 (DB), Sohan Lal Vs. Gurbax Kaur, 2011(3) PLR 430, Balwant Singh and another Vs. Saroj Kumari and others, 2014(1) PLR 421, Piare Lal and others Vs. M/s Modern Automobiles and another, 2012(1) PLR 345, Jaswant Singh Vs. Sukhjiti Kaur, 2010(3) PLR 33** and **Dalbir**

Singh Vs. Bachan Singh, 2010(4) PLR 525 and contended that the service was not effected on the correct address. The substituted service allegedly effected on the wrong address is illegal. Effecting substituted service by way of publication on the wrong address cannot be a valid service as the same was obtained by misleading the Court. The decree passed on such service is required to be set aside. The Court is not justified in directing substituted service on the wrong address that too without recording any satisfaction with regard to feasibility of summoning the defendants by means of ordinary process on the addresses shown in the sale deed. In **Dalip Singh's case (supra)**, This Court has doubted wide circulation of the newspaper Nawan Zamana, vide which the petitioners were allegedly served by means of substituted service.

[8]. The aforesaid plea of limited circulation of the newspaper was sought to be diluted by the respondent by asserting that the Lower Appellate Court in para No.9 of the judgment has found as a matter of fact that the publication was ordered to be effected for the service of the petitioners and the newspaper Nawan Zamana was notified by the High Court for circulation in Punjab.

[9]. Learned counsel for the respondent vehemently stressed upon the statement of Anil Kumar Mahajan (AW 1)

when he was recalled for cross examination. According to his statement, Ishwar Nagar Mohalla does not fall in any village. He volunteered that he is residing in Ishwar Nagar Mohalla and he pleaded ignorance if Pathankot City is comprised of villages Anandpur, Bhadroya, Dhakki, Daulatpur, Lamin and Kuthiali. He admitted that he purchased the plot in Ishwar Nagar Mohalla. On the basis of said pleadings, it was sought to be canvassed that the witness has admitted that the area of Ishwar Nagar, Pathankot is the same as that of Bhadroya. The witness after seeing the judgment and decree stated that the property fell in Bhadroya, Tehsil Pathankot. By making reference to the aforesaid statement, learned counsel contended that the factum of address of Bhadroya viz-a-viz Ishwar Nagar is the same.

[10]. Perusal of the aforesaid interlocutory orders would show that despite a specific address given in the sale deed itself on the basis of which defendants No.7 and 8 were impleaded in the suit, no summon was issued on the said address, rather summons were issued on the address where the land was situated. Orders dated 18.04.1992 and 30.05.1992 passed by the trial Court would show that defendants No.7 and 8 were not found residing on the addresses on which they were sought to be served. Correct addresses were required to be filed. The application under Order 5 Rule 20 CPC was filed showing them

to be resident of the same addresses. Trial Court did not record its satisfaction as to how ordinary process for service of defendants No.7 and 8 was not sufficient for ordering substituted service, particularly when no reference was made for non-issuance of summons on the addresses shown in the sale deed. The publication was ordered to be done in the newspaper Daily Nawan Zamana, Jalandhar.

[11]. Without dilating upon the controversy any more, I find that in view of interlocutory orders on record, the petitioners were sought to be served by means of ordinary way. Service report was to the effect that the defendants could not be served on the given addresses for want of correct addresses, therefore, it was legally incumbent upon the plaintiff to submit the correct addresses. The correct addresses were duly depicted in the sale deed on the basis of which defendants No.7 and 8 were impleaded in the suit. Instead of submitting correct addresses of defendants No.7 and 8, process in terms of Order 5 Rule 20 CPC was sought to be invoked that too without recording any satisfaction of the trial Court with regard to feasibility of not serving the defendants by means of ordinary process.

[12]. In view of aforesaid, I find that there was no valid service of the petitioners at the time when they were proceeded against *ex parte*. Resultantly, impugned orders are set aside.

This revision petition is allowed. Follow up action be taken by the trial Court.

August 27, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No