

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

**CR No.7865 of 2014 (O&M)
Date of decision : May 09, 2018**

Harnam Singh

..... Petitioner

Versus

Jaswinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Deepak Aggarwal, Advocate for the petitioner.

Mr. G.S. Sidhu, Advocate for the respondent.

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 order dated 18.09.2014 passed by learned Addl. District Judge, Fast Track Court, Bathinda, affirming the order dated 14.08.2012 passed by learned Civil Judge (Jr. Divn.), Bathinda, vide which an application filed under Order XXXVII, Rule 4 read with Section 151 CPC, 1908 was dismissed.

Heard.

It comes out that the plaintiff-respondent filed a summary suit for recovery of ₹51,200/- under Order XXXVII CPC, 1908. In the said case, the defendant-petitioner did not appear despite munadi and was proceeded against ex parte. Therefore, the ex parte judgment and decree under Order XXXVII, CPC, 1908 was passed on 20.02.2008. Thereafter, the defendant-petitioner filed an application under Order XXXVII, Rule 4 CPC, 1908 on 21.05.2008 for setting aside the ex parte judgment and decree, stating that he was not residing at the given address i.e. House No.16117, Street

No.10/21, Balla Ram Nagar, Bathinda, since February 2004 and his new address is Street No.15, National Colony, Bathinda, on which he was never served. He came to know when his salary was attached, in pursuant to the said ex parte judgment and decree.

The assertions were denied by the respondent, who stated that respondent has shifted to Street No.15, National Colony, Bathinda, both the streets are intersection and close to each other and not far away.

From the pleadings, following issues were framed:

“1. Whether the applicant is entitled to get the ex parte decree dated 20.2.2008 set aside as he was not duly served? OPP

2. Relief.”

Learned Civil Judge (Jr. Divn.), Bathinda, held that the summons and munadi were, in fact, effected on the new address of the defendant-petitioner i.e. Street No.15, National Colony, Bathinda, and ex parte proceeding against him were rightly conducted.

A perusal of the judgment of the trial Court shows that in this case, the crucial witness i.e. Ashok Kumar, Process Server was examined. He deposed before the Court that on receiving the summons, he went to Balla Ram Nagar, Bathinda at the address of the defendant-petitioner, where it was reported that he has shifted to new house in Street No.15, National Colony, Bathinda. Therefore, he went there, where the defendant-petitioner refused to accept the summons. He affixed the copy of the summons on the conspicuous place of his house. The Court did not proceed ex parte against him and issued fresh summons on 24.08.2007 to the defendant-petitioner. This time, again Ashok Kumar, Process Server visited the house of the defendant-petitioner in Street No.15, National Colony, Bathinda. The

defendant-petitioner avoided the service. The copy of the summons was affixed on his house. Thereafter, the Court issued *munadi* which was conducted by said Ashok Kumar in the locality of National Colony.

It also comes out from the pleadings that said Balla Ram Nagar and National Colony adjoin each other and not far away. Therefore, it amounts to same locality. First the summons were refused and the Court as a matter of precaution, again issued summons, which were avoided by the defendant-petitioner on his new address and thereafter, *munadi* was effected in the locality.

Learned counsel for the petitioner contends that without any order from the Court, the Process Server could not go to the new address of the defendant-petitioner for effecting service.

I am of the view that when the summons are issued to a party and the Process Server finds that the party has shifted to a nearby place, without any order from the Court, he can go to locate the party for effecting service at the new address. The purpose is to effect service upon the defendant-petitioner and not to fall into the technicalities. Therefore, it is held that the trial Court rightly held that the proper service was effected upon the defendant-petitioner. Therefore, there is no illegality or infirmity in the findings recorded by both the Courts below.

As such, the present revision petition is dismissed.

(KULDIP SINGH)
JUDGE

May 09, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No