

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

CR No.8134 of 2018

Date of Decision : 30.11.2018

Nirmal Singh (since deceased) through LR Kulwant Singh

.....Petitioner

Versus

Dharam Pal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Ms. Sukhpreet Kaur, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

This revision is directed against the impugned order dated 14th May, 2018 passed by the Ld. Additional District Judge, Hoshiarpur (Annexure P-4) vide which the application filed on behalf of the petitioner who happens to be the son of deceased-Nirmal Singh, who was respondent No.2 in the original MACT case, under Order 9 Rule 13 of the Civil Procedure Code (for short, 'the CPC') was dismissed.

2. It may be mentioned that the petitioner had been impleaded as the sole surviving legal representative of the deceased-truck owner and the original MACT Award was passed *ex parte* against him.

3. He approached the Ld. Tribunal seeking to set aside the said Award by way of an application in which it was contended that no actual service of summon/notice in the claim case was effected upon him.

4. Ld. Court below however did not accept his contention since apparently on the summons maintained in the original case record it was seen that service had been effected upon the petitioner/original respondent No.2(a) personally on 2nd November, 2011 as per report of the Process Server, and in any case, the application filed by him was hopelessly time barred.

5. After hearing Ld. Counsel for the petitioner, this Court finds no reason to interfere with the impugned order. This is so because the award in the MACT case was passed on 3rd September, 2012, and by the petitioner's own claim, he first came to learn about such award on 21st January, 2015. He was therefore obligated to approach the Court under Order 9 Rule 13 of the CPC within 30 days thereafter. However his application was actually filed 03 months later on 21st April, 2015 even though it was shown to be dated 25th February, 2015, and there was no explanation of delay, much less explanation of each day's delay in filing of the same.

6. It was never his case that the service report against him was manipulated for any extraneous reasons or that the Process Server concerned who otherwise happens to be an Officer of the Court had any enmity with him for submitting any wilful false report of service.

7. Another grievance raised on behalf of the petitioner is that he had separately filed an application under Order 1 Rule 10 of the

CPC before the Ld. Court below on 20th September, 2017, in which he had sought impleadment of one Avtar Singh as an additional respondent, but his application under Order 9 Rule 13 of the CPC alone was dismissed without passing any order on the said application under Order 1 Rule 10 of the CPC. Even if that be so, any decision upon the said separate application would necessarily have to be distinct from that on the main application under Order 9 Rule 13 of the CPC, which in the given circumstances has been independently dismissed on its own merits.

8. For the above reasons, the impugned order passed by the Ld. Tribunal/Court below is affirmed and the present revision is dismissed. However, in case the other application under Order 1 Rule 10 of the CPC filed by the petitioner, is still undisposed, as claimed by him, then Ld. Court below may pass a proper and reasoned order upon the same expeditiously after hearing the parties concerned.

November 30, 2018

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No