

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CR No.9033 of 2017

Date of decision: 05.02.2018

Sanjeev Kumar

..... Petitioner

Versus

Vinod Kumar Mahajan and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikas Bahl, Sr. Advocate with
Mr. Amandeep Singh, Advocate
for the petitioner.

Mr. Rajat Khanna, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Petitioner has challenged the order passed by the trial Court dated 24.11.2017 refusing to set aside the ex parte proceedings. Petitioner-defendant No.8(c) was proceeded ex parte as summons sent for service upon him were received back with the report that the mother of the defendant No.8(c) has been apprised of the date of hearing.

There was no personal service on defendant No.8(c). As per the amendment carried out by this Court under Order 5 Rule 15, the service can be effected on any adult male member of the family of the defendant who is residing with him if the defendant cannot be found or is absent from his residence and has no agent empowered to accept service of the summons on his behalf. The amendment in the Code of Civil Procedure carried out by this Court is extracted as under:-

“Punjab, Haryana and Chandigarh – (1) Where service may be

on male member of defendant's family. - *Where in any suit the defendant cannot be found or is absent from his residence and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him."*

In the present case, it is apparent that first of all there was no service on the mother and secondly that the service was not in accordance with Order 5 Rule 15, CPC as amended out by this Court.

On the other hand, learned counsel for the respondent has very vehemently argued that in fact the application is only a ploy to delay the trial of the suit and defendant No.8(c) is legal heir of Sanjeev Kumar and neither his mother nor other brother are defending the suit.

He further submits that the suit for specific performance of the agreement to sell has been filed and the trial of the suit has made substantial progress.

Taking into consideration the facts of the case as also the fact that an affidavit has been filed by the petitioner that his mother and other brother would appear and contest the suit, this Court is of the considered opinion that the petitioner and his other family members should be granted opportunity to defend the case.

In view of what has been discussed above, the order under revision is set aside. The petitioner and his family members are granted opportunity to file their written statement and defend the suit. However, keeping in view that the suit is for specific performance of an agreement to sell with respect to an immovable property pending for the last more than 3½ years, the trial Court is requested to expedite the trial of the case and decide the same preferably within a period of 9 months from the date of receipt of certified copy of this order. The defendant shall be granted

opportunity to file written statement as also opportunity to cross-examine the witnesses already examined by the plaintiff.

Revision petition is allowed.

05.02.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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