

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1608 of 1995
Date of decision:22.02.2018

Smt. Ganga Devi and Others

..Appellants

Vs.

Sat Pal and Others

..Respondents

CORM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Gurcharan Dass, Advocate
for the appellants.

Mr. C.B. Goel, Advocate
for the respondents.

AJAY TEWARI, J.(ORAL)

This appeal has been filed against the order dated 20.05.1995 dismissing an application under Order 41 Rule 21 read with Section 151 CPC filed by the appellants.

The essential admitted facts are that the respondents had filed a suit which was dismissed vide judgment and order dated 28.02.1987. An appeal was filed on 25.03.1987. Notices were issued to the appellants on 16.04.1987 for 28.04.1987. The Process server reported refusal of notice. Since none appeared on behalf of the appellants, ultimately the appeal was allowed on 20.05.1987 which was the next date fixed. Further out of 8 appellants, 2 were residents of Village Bhadson, Tehsil and District Karnal and 6 were residents of Village Balla, Tehsil Aasandh, District Karnal. In the first instance, one

summons was issued for the two appellants who were residents of Village Bhadson and one summons was issued for the six appellants who were residents of Village Balla. The process server visited both villages on the same date (which are in different Tehsils) and recorded the refusal of the service. Thereafter, the process server died. When the appellants came to know of the appeal having been allowed, they moved the present application which having been dismissed, the appellants are before this Court.

The primary argument of learned counsel for the appellants is that as regards the two appellants of Village Balla, nobody had appeared to testify that the appellants had refused to accept the summons. Moreover, as per him, there was no need for the extraordinary haste with which this appeal was disposed of.

Counsel for the respondent has argued that early disposal cannot be a ground for suspicion. As regards the appellants of Village Bhandson are concerned, at least they were deemed to be served because the Lambardar and the Chowkidar had appeared to testify that they had refused the notice. Therefore, it shows that all the appellants had knowledge regarding pendency of the appeal.

In my considered opinion the appeal has to be allowed. It is not disputed that the civil suit was contested. Consequently, there was no occasion for the appellants to have absented themselves despite knowledge. Moreover even if it is accepted that the appellants No. 3 to 8 (residents of Village Balla) had the knowledge it cannot be presumed

that it was within the knowledge of appellant No. 1 and 2. Consequently, even if the argument that there was extraordinary haste with which the appeal was decided, is not accepted, in my considered opinion in the interest of justice it would have been more appropriate if application under Order 41 and Rule 21 had been allowed and the parties permitted to contest the case on merits. Consequently, the appeal is allowed and the matter is remanded back to the lower appellate Court i.e. the District Judge, Karnal for a fresh decision on the appeal on merits.

Let the record (as it is) be sent to the District Judge, Karnal forthwith.

Parties through their counsel are directed to appear before him on 25.04.2018.

Since the main case is decided, pending civil misc. application, if any, stands also disposed of.

February 22, 2018

Poonam (II)

**(AJAY TEWARI)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**