

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

S.A.O. No. 17 of 2018 (O&M)

Date of decision: 05.12.2018

Gurmeet Kaur

.... Appellant

vs.

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Saurabh Kapoor, Advocate
for the appellant.

Ms. Anju Sharma Kaushik, DAG, Punjab
for respondents no.1 and 2.

None for respondent no.3.

SURINDER GUPTA, J

Heard.

This is appeal against the order dated 5.12.2017 passed by learned Additional District Judge, Ludhiana whereby *ex-parte* judgment and decree passed by Additional Civil Judge (Sr. Division), Jagraon was set aside and the case was remanded with direction to learned Additional Civil Judge (Senior Division), Jagraon to decide the same afresh from stage of providing opportunity to defendant to file written statement.

Plaintiff-appellant filed suit seeking relief of declaration that termination of his service vide order dated 7.4.2006 is illegal, null and void.

On filing of the suit, trial court vide order dated 5.10.2006 ordered issuance of notice to defendant. It appears that notice was issued but the same was

not received back. The appellant placed on file copy of postal receipt dated 5.12.2006 on the basis of which trial court observed that defendant-respondent has been duly served and fixed the case for *ex-parte* evidence.

Defendant-respondent preferred appeal which was declined by the learned Additional District Judge, Ludhiana. On filing of civil revision, order passed by the learned Additional District Judge, Ludhiana, dismissing the appeal on the ground of delay in filing appeal was set aside and the appeal was again remanded to the first Appellate Court to decide the same on merits.

Learned Additional District Judge, Ludhiana, while deciding the appeal has taken note of the receipt and registered cover dated 5.12.2006 and observed in para no.11 of its order, which reads as follows :-

“11. A perusal of these orders show that the learned lower court has not considered the fact that the appellants/defendants were never ordered to be served by way of Registered Cover Acknowledgment Due, rather he has made a specific report with regard to the fact that the notice was (sic) not received. So, notice issued to the appellants/defendants by the Ahlmad of the Court were not received back and learned lower court after accepting the receipts of Registered Cover Acknowledgment Due of 5.12.2006 has proceeded against the appellants/defendants as ex-parte. No satisfaction has been recorded by the court that the defendants are duly served. Furthermore, the receipts placed on file show that the same have been issued with regard to some civil writ petition under Article 226 and that too not from Ludhiana, but from the post

office of Moga. If the notice would have been issued by the Ahlmad through registered cover, then the receipt would have been of post office at Ludhiana not that of post office at Moga. So, it seems that the learned lower court, by taking into consideration unauthorized registered cover receipts, has proceeded the appellants/defendants ex-parte without proper application of mind. As such, it is proved on record that the appellants/defendants were wrongly proceeded against ex-parte. They were not duly served with notice of the suit. In such circumstances, the ex-parte decree and judgment passed against the appellants/defendants is not sustainable and it is desirable that this decree and judgment be set aside and the matter is required to be remanded to learned lower court from the stage of appearance of the parties and the learned lower court shall decide the lis afresh after affording the appellants/defendants proper opportunity to defend the lis.”

Learned counsel for the appellant has argued that the summons were sent through registered cover to the respondent and it was a due service even if the court has not specifically ordered sending of summons through registered cover.

The above submission of learned counsel for appellant is not tenable in view of facts of this case as some registered cover was sent to the respondent from Moga while this case was pending at Ludhiana. It is no where the case of appellant that he had taken *dasti* summons under the order of the court. There is nothing on record that registered cover sent vide postal

receipt dated 5.12.2006 was containing summons of the case and copy of
plaint etc. No explanation has been put forth by the appellant as to why
registered cover was dispatched from Moga.

Keeping in view the above fact, I find no infirmity in the order
of the appellate court calling interference in this appeal.

This appeal has no merits, hence dismissed.

December 05, 2018

deepak

(Surinder Gupta)
Judge

Whether speaking/reasoned* : *Yes/No
Whether reportable* : *Yes/No