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

**Civil Revision No.1264 of 2017
Date of Decision:08.03.2019**

**Thakur Ram Singh Thr LRs.....Petitioner
Vs
Surjit Singh now deceased through LRs
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. I.S. Brar, Advocate
for the petitioner.

Mr. Rajan Bansal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 28.01.2015 passed by the Addl. Civil Judge (Sr. Divn.) Bathinda and judgment and decree dated 31.03.2016 passed by the Addl. District Judge, Bhatinda vide which application under Order 37 Rule 4 CPC was concurrently dismissed.

[2]. Plaintiffs filed a suit for recovery. Notice was issued for summoning of the defendant/petitioner for 03.03.2006. Process Server namely Ashok Kumar made a report dated 25.02.2006 that the defendant/petitioner was not residing at the given address. In the report, no witness was cited in whose presence

the Process Server allegedly went to house of the defendant/petitioner. On 03.03.2006, the trial Court adjourned the case for 24.04.2006 for service of the defendant on his correct address. The correct address was not filed by the plaintiffs and the case was adjourned to 27.07.2006 and thereafter to 17.10.2006 for want of correct address.

[3]. On 16.10.2006, the Process Server again made a report to the effect that the defendant evaded the service and thereafter affixation was made on the house of the defendant. He further reported that nobody was ready to become witness in the aforesaid process of affixation. On 17.10.2006, the trial Court treated the aforesaid service to be a valid service and thereafter on 13.12.2006 after awaiting the appearance of the defendant/petitioner *ex parte* judgment and decree was passed.

[4]. Petitioner filed an application for setting aside the *ex parte* proceedings/judgment and decree on the ground that he acquired knowledge only on 05.12.2008, when he went to execute agreement to sell in favour of one Mal Singh and in that connection he contacted the Patwari. Thereafter, petitioner came to know about the attachment of land which was ordered to be effected by sale of land of the defendant/petitioner. Thereafter, the petitioner filed an application for setting aside the *ex parte* judgment and decree under Order 37 Rule 4 CPC

and the same was dismissed by the Courts below.

[5]. Perusal of the record would show that the suit was filed under Order 37 CPC for recovery of Rs.4,36,800/- by the plaintiff. Petitioner was allegedly served by means of affixation on 16.10.2006 and the said service was held to be proper service. It has not come on record, whether the plaintiffs filed correct address of the defendant/petitioner despite the orders dated 03.03.2006, 27.03.2006, 27.07.2006 and 17.10.2006. For want of correct address, how the Process Server went to house of the defendant on 16.10.2006 and made a second report of evading service and affixation of pronote and plaint by him. It could not be explained on record as to how the Process Server went to the house of defendant/petitioner on second occasion without there being any proper order to that effect.

[6]. The Courts below have dismissed the application under Order 37 Rule 4 CPC primarily on the ground that the petitioner has not established the knowledge of the *ex parte* proceedings from lawful source and secondly the filing of application was held to be barred by limitation.

[7]. Learned counsel for the petitioner vehemently submitted that there was no thumb mark/signature of the petitioner on the summons issued by the Court. No attesting

witness was cited by the Process Server. The documents Ex.A-1 to Ex.A-8 would show that the petitioner was permanently resident of Dhobiana Basti, Bathinda and he has been condemned unheard.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. Perusal of the impugned orders would show that the petitioner was proceeded against *ex parte* only on the premise that in the report dated 16.10.2006, the Process Server had reported that the petitioner had evaded service and thereafter affixation was made which was not witnessed by anyone. The requirement of law under Order 5 Rule 17 has been violated inasmuch as that firstly it is not discernible from the record whether Process Server had visited the house of the petitioner after filing of correct address by the plaintiffs. Once the petitioner was not found residing on the address on which he was impleaded in the suit, there was no occasion for the Process Server to visit the same place, particularly when no correct address was submitted by the plaintiff. Secondly, when the case was adjourned on 03.03.2006, 27.07.2006, 27.07.2006 and 17.10.2006 for the purpose of correct address, there was no occasion for the Process Server to visit the house of the defendant/petitioner on 16.10.2006 and to make a report to the

contrary. This report was not witnessed by any independent person.

[10]. The requirement of Order 5 Rule 17 CPC is mandatory and the same has been flouted. Plaintiff-Surjit Singh was found to be father of an Advocate. It is a settled principle of law that no person should be condemned unheard. The inherent lacuna in the service of the petitioner would overweigh the observations of the Courts below that the defendant had the knowledge regarding *ex parte* proceedings and the filing of application was time barred. The impugned orders were in disregard to the principles of natural justice and, therefore, untenable in the eyes of law. At the most the petitioner would get fair chance of contesting the case in the event of setting aside the *ex parte* proceedings/*ex parte* judgment and decree passed against him.

[11]. In view of above, the impugned order dated 28.01.2015 and judgment and decree dated 31.03.2016 passed by the Courts below are set aside. This revision petition is allowed. Parties are directed to present before the trial Court on 28.03.2019.

March 08, 2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No