

CR-2252-2016 (O&M)

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

CR-2252-2016 (O&M)

Date of decision : 27.05.2019

Bashiri

... Petitioner

Versus

Handu

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Lamba, Advocate
for the petitioner.

Ms. Bhanvi Sood, Advocate for
Mr. Aditya Jain, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned orders dated 01.02.2014 and 11.01.2016, whereby the application dated 30.10.2008 under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the *ex parte* judgment and decree dated 22.12.1986, has been dismissed.

Mr. Rajesh Lamba, learned counsel appearing on behalf of the petitioner submitted that the respondent-plaintiff-Handu, filed the suit for permanent injunction, in the year 1985, by impleading the petitioner as defendant by giving two addresses i.e. one Village Ghorawali and second Village Mundera Near Pinangwan, Ferozepur Jhirka, District Gurgaon. As per the zimini order, the Court below has wrongly taken to be service of the petitioner as correct, for, the report of the Process Server, reveals that she

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had already left the village Ghorawali and staying in Village Mundera and thumb-impressions were of Chowkidar and not of the petitioner. On acquiring the knowledge regarding ex parte judgment and decree *ibid*, in the year 2008, she filed the application, but the same has erroneously been dismissed. The attention of this Court has also been drawn to the Ex.A-2 i.e. report of the summons, which revealed that the petitioner had left the village. The next date in the summons was 12.12.1985 and on that date, the trial Court passed the following order:-

"Order dated 12.12.1985

Defendant not present. She served through R.C. She is proceeded ex parte. To come up on 27.2.86 for ex parte evidence."

There is no compliance of Order 5 Rule 19 of CPC, thus, urges this Court for setting aside the impugned orders, under challenge.

Ms. Bhanvi Sood, learned counsel for the respondent supported the impugned orders as the same are based upon the appreciation of the documentary evidence. The decree was in the knowledge of the petitioner-defendant, but intentionally did not challenge the same. The filing of the application was *mala fide* and tired out the respondent, who had already been successful in obtaining the injunction.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below, which was summoned on the last date of hearing and of the view that there is force and merit in the submissions of Mr. Lamba, for, the acknowledgment on the summons sent for 12.12.1985, was that she had already left Village Ghorawali and staying in Village Mundera and thumb-impressions were of Chowkidar and not of

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the petitioner, but the Court below proceeded *ex parte*, vide order dated 12.12.1985, extracted hereinabove. In my view, the Court below should not have proceeded the petitioner *ex parte*, but ought to have ordered for substituted service or other service. There is no compliance of Rule 17, 18, 19 of Order 5 of the Code of Civil Procedure, thus, there is misdirection. As regards the acquisition of knowledge, no concrete evidence has been placed on record to belie the assertions of the applicant.

Keeping in view the aforementioned facts, the impugned orders ,under challenge, are not sustainable being fallacious and infirm and the same are hereby set aside. The application under Order 9 Rule 13 of CPC is allowed. Resultantly, the present revision petition is allowed.

27.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**