

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

**CR No.2391 of 2017(O&M)
Date of Decision-15.02.2019**

Ravinder Pal ... Petitioner
Versus
Randeep Singh Grewal and others ... Respondents

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

Present: Mr. Viren Jain, Advocate for the petitioner.
Mr. M.L. Saggar, Senior Advocate with
Mr. T.S. Sullar, Advocate for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of order dated 13.12.2016 passed by Additional District Judge, Ludhiana whereby the application filed by the petitioner/defendant No.1 for setting aside the *ex parte* judgment and decree dated 07.04.2015 was dismissed.

[2]. Plaintiff/respondent No.1 filed a suit for possession by way of specific performance of agreement to sell dated 22.03.2006 in respect of land measuring 27 kanals as shown in the headnote of the plaint. Petitioner was proceeded against *ex parte*. Petitioner was impleaded on two addresses i.e. (1) Ravinder Pal s/o Shri Satnam Singh r/o 317-G, Bhai Randhir Singh Nagar, Ludhiana and (2) r/o 5-F, Sarabha Nagar, Ludhiana.

[3]. The suit was dismissed by the trial Court vide judgment and decree dated 01.02.2014. Plaintiff/respondent No.1 filed an appeal before the Additional District Judge, Ludhiana. Petitioner was again proceeded against *ex parte*.

[4]. Perusal of the record would show that the petitioner was allegedly served on the address of 5-F, Sarabha Nagar, Ludhiana. The report of the Process Server dated 01.05.2014 would show that when inquiry was conducted by Gurpreet Singh, Process Server at the spot, then Sh. M.S. Gill, landlord was found present who told to the Process Server that the petitioner was residing at that place on rent, but now he has left the place. No witness came forward to sign the report.

[5]. Perusal of orders dated 25.03.2014 and 16.04.2014 would show that service could not be effected upon the petitioner. Order dated 02.05.2014 would show that the registered cover sent to the petitioner could not be served because he had left the said address. Fresh summons were ordered to be issued on filing correct address with registered cover through ordinary as well as by registered post/A.D for 14.08.2014. On 14.08.2014, last opportunity was granted to respondent No.1 to furnish correct address, registered cover and copy of appeal for service of the petitioner within one week and thereafter, summons were ordered to be issued to the petitioner through ordinary manner as well as by registered post/A.D. Thereafter, in due course, the case was

adjourned to 23.12.2014, wherein it was recorded that the petitioner was *ex parte* before the trial Court. He was ordered to be summoned by way of affixation for 28.01.2015 which was to be effected in the presence of the witnesses of the locality. Thereafter, in terms of order dated 23.12.2014, compliance was not done by respondent No.1 and on 28.01.2015, the petitioner was proceeded against *ex parte* on the premise that registered cover was not received back within a period of 30 days. Postal receipt dated 23.12.2014 was placed on record and since the period of more than 30 days was elapsed, presumption of due service was drawn and the petitioner was proceeded against *ex parte* and the case was adjourned for arguments.

[6]. Perusal of aforesaid facts would show that vide order dated 23.12.2014, petitioner was ordered to be served by way of affixation for 28.01.2015 and on 28.01.2015, some different order was passed without compliance of order dated 23.12.2014 wherein the petitioner was ordered to be served by way of affixation only.

[7]. During course of arguments, learned Senior Counsel for respondent No.1 could not refute the flows in the alleged orders vide which the petitioner was allegedly served with the process of the Court. The grievance of learned Senior Counsel for respondent No.1 was that since the petitioner has already

received Rs.33 lacs, therefore, some condition be imposed in respect of said amount.

[8]. At this stage, this Court cannot venture to pass any such condition. Petitioner was allegedly served by means of registered notice which was never subject matter of order dated 23.12.2014, rather correct address of the petitioner with registered cover/A.D was to be submitted by respondent No.1, but the same was not supplied and the same address was circulated on which the petitioner was not served earlier. Petitioner was never sought to be served on the first address i.e. r/o 317-G, Bhai Randhir Singh Nagar, Ludhiana. The second address i.e. r/o 5-F, Sarabha Nagar, Ludhiana had already been left by the petitioner.

[9]. In view of above, I deem it appropriate to set aside the impugned order dated 13.12.2016 passed by Additional District Judge, Ludhiana. This revision petition is accordingly allowed. Additional District Judge, Ludhiana shall proceed to decide the appeal on merits after affording reasonable opportunity of hearing to the petitioner. Additional District Judge, Ludhiana shall make every possible endeavour to decide the appeal at the earliest.

(RAJ MOHAN SINGH)
JUDGE

15.02.2019
Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No