

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3245 of 2016
Date of Decision: January 29, 2019

Ranvir Singh

...Petitioner

Versus

Sube Singh (since deceased) through L.Rs

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. C.S.Singh, Advocate for
Mr. G.S.Hooda, Advocate,
for the petitioner.

AMIT RAWAL, J.

The present civil revision at the instance of the petitioner-defendant-judgment debtor is directed against the order dated 26.03.2015 (Annexure P-4) and 08.12.2015 (Annexure P-5), whereby the application dated 28.02.2011 (Annexure P-2) filed under the provisions of Order 9 Rule 13 CPC for setting-aside the ex-parte judgment and decree dated 29.08.2007, has been dismissed.

Mr. C.S.Singh Advocate for Mr. G.S.Hooda, learned counsel for the petitioner submitted that the respondent-plaintiff erroneously obtained the judgment and decree dated 29.08.2007 in a Civil Suit No.398 of 2005 for specific performance of the agreement to sell, subject matter of the suit property by obtaining the report in connivance with the Process Server. In fact, the Process Server made two reports on the back of the summons, one on 22.12.2005 and second on 24.12.2005. The first one disclosed that the judgment debtor-defendant in the suit and petitioner

herein was not available and second time “Ruhposh”. There was no compliance of Rule 17 of Order 5 CPC. The petitioner had already left the house and became the Inspector of Haryana State Gaushala Union, Hisar, which fact is evident from the identity card and photograph (Annexure P-3 Colly). The orders under challenge are not sustainable in the eyes of law as the address of the petitioner was shown of Village Mundalana, Tehsil Gohana, District Sonapat. The petitioner was facing harassment and victimization at the hands of his wife, who had registered a criminal case against him and in those compelling reasons, left the village and had been residing in Jat Dharamshala situated in Sukartal District Mujafarnagar. In support of his submissions, relied upon the judgment of Hon'ble the Supreme Court rendered in **Surinder Kumar Versus Harbhajan Singh, 2005 (10) SCC 635** to contend that the order, in the absence of any discussion on the material on record of the application under Order 9 Rule 13 CPC, is liable to be set-aside and thus, prayed for setting-aside the impugned orders.

I have heard the learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel.

Though the zimni order proceeding the petitioner ex-parte has not been attached, but it is revealed from the orders that the affixation on the door was made. Rule 17 of Order 5 CPC deals with the aforementioned provisions, thus, it cannot be said that there was no compliance. Order dated 04.01.2006 reads as under:-

“It has been reported on the summons issued to defendant that the process server visited the village on 22.12.2005 and on that day defendant was not available in the village. Again this

process server visited the village on 24.12.2005 and the defendant on getting the information fled away from the spot. Then copy of plaint as well as copy of summons has been affixed on the house of defendant and the date of case as well as name of the court was read over in the loud voice in the village. Both the reports are verified by Dalip Singh Chowkidar of the village Mundlana. The process server has given affidavit to the effect of completion of service. Today, case has been called several times since morning. Now it is 3.00 p.m. No more wait is justified. Hence, defendant is proceeded against ex parte.”

The identify card and photograph cannot be a sufficient ground in support of the pleadings to prove the change of address or victimization at the hands of his wife. No such proceedings have seen the light of the day. It appears that the petitioner was proceeded ex-parte in accordance with law and submission of the application under Order 9 Rule 13 CPC was an attempt to delay the execution of the judgment and decree.

For the reasons stated above, the orders under challenge cannot be said to be suffering from illegality or perversity. No ground for interference is made out. Resultantly, the revision petition is dismissed.

January 29, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No