

221

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.3726 of 2017 (O&M)
Date of Decision: 27.02.2019

Khiloni

.....Petitioner

Vs

Rattan Chand

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sachin Mittal, Advocate
for the petitioner.

Mr. Ravi Malik, Advocate for
Mr. S.K. Panwar, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the orders dated 28.09.2016 and 12.05.2017 passed by the Addl. District Judge, Mewat dismissing the application under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 07.04.2014 and the appeal arising therefrom.

[2]. At the time of issuance of notice of motion on 04.07.2017 following order was passed:-

“By referring to statement of RW 1 Rajender Kumar (Process Server), learned counsel for the petitioner contends that the Process Server has not disclosed the identity of the person who was allegedly served by him. Petitioner was not

known to the Process Server, nor he made any contact with the Sarpanch. He could not locate the Chowkidar of the village. The name of the person from whom he allegedly made the inquiries has not come forth. Learned counsel submits that the alleged service effected upon the petitioner was not in consonance with the provision in terms of Order 5 Rule 16 CPC read with Order 5 Rule 18 CPC, wherein Process Server was required to endorse or cause to be endorsed on the original summon, a return stating the time and the manner in which the summon was served and the name and address of the person (if any) identifying the person and witnessing the delivery of summon have to be disclosed.

Notice of motion for 27.09.2017.

Till the next date of hearing, executing Court is directed to adjourn the proceeding beyond the date fixed by this Court.”

[3]. In order to appreciate the controversy the cross-examination of the process server while appearing as RW-1 can be appreciated. Process server is alleged to have served the petitioner and obtained his thumb impression. Process server has not ascertained the identity of the person allegedly served by him. Petitioner was not known to the process server personally. The process server did not make any contact with the Sarpanch, nor he could locate the *Chowkidar* of the village, who could have located the house of the petitioner and have identified him. The process server did not give name of any person from whom he allegedly made inquiry about identity of the petitioner and location of his house.

[4]. The cross-examination of RW-1 would further show that the witness has asserted that he had borrowed a cycle in order to reach to the destination. Name of the owner of the cycle has not come forth. The report made on the summon was to the effect that none was prepared to give witness on the summon. If there was none to witness the report of summon, the process server ought to have been more vigilant in order to make proper report in respect of identity of the person sought to be served with reference to location of his house and proper identification by some public person like Sarpanch and *Chowkidar*.

[5]. Both the Courts below have drawn an inference that signature appearing on the summon could have been got compared by the petitioner by some Expert. In para No.11 of the impugned order dated 28.09.2016 passed by the trial Court, it has been recorded that the petitioner was personally known to the process server Rajender Kumar. This fact is found to be factually wrong in view of cross-examination of process server Rajender Kumar as RW-1, who has admitted that the petitioner was not known to him personally.

[6]. The incriminating information arising out of the cross-examination of process server Rajender Kumar would negate the compliance of Order 5 Rules 16 & 18 CPC. The process server was required to endorse or cause to be endorsed on the

original summon, a return stating the time and the manner in which the summon was served and the name and address of the person (if any) identifying the person and witnessing the delivery of summon. Mandatory compliance has not been done by the process server. Inference drawn by the trial Court on the basis of non-examination of signature by some Expert witness would not justify the initial inaction on the part of the process server in not complying with the mandatory requirement of law viz.-a-viz. proper identification of the person sought to be served i.e. identification of the person from public servant strictly in terms of Order 5 Rules 16 and 18 CPC. A wrong admission has been noticed by the trial Court in para No.11 of the impugned order dated 28.09.2016, which in my considered opinion is not legally sustainable in the eyes of law. The person cannot be condemned unheard.

[7]. Taking into consideration the totality of the facts and circumstances of case, I deem it appropriate to set aside the impugned orders dated 28.09.2016 and 12.05.2017 passed by the Addl. District Judge, Mewat. This revision petition is accordingly allowed. Normal consequences to follow.

February 27, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No