

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CR No.437 of 2019

Date of decision:13.2.2019

Joginder Singh @ Polu

... Petitioner

versus

M/s Satish Kumar Raghbir Chand, Commission Agents, and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Shakti Singh, Advocate,
for the petitioner
Mr.R.D.Sharma, Advocate,
for the respondents
...

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner has challenged the order passed by the learned Additional District Judge, Kaithal (appellate Court) dated 18.12.2018 (copy Annexure P-5), by which his appeal has been dismissed with the order stating as follows:-

“Neither the cost of Rs.200/- as imposed vide the previous order has been deposited, nor correct address of respondents was filed, due to which notice could not be issued to the respondents for consecutive second opportunity.

In the given circumstances, the present appeal is dismissed under Order IX Rule 2 of the Code of Civil Procedure.”

Learned counsel for the petitioner firstly submits that the

provision invoked by the appellate Court is inapplicable, as in case of an appeal the specific provisions applicable are Rules 17 and 19 of Order 41 of the CPC and further, one of the reasons given in the impugned order is that the correct address of the respondents had not been filed due to which notice could not be issued to them for the second consecutive opportunity.

As already noticed by this Court in this appeal vide its order dated 21.1.2019, learned counsel had contended at that stage also that there was no changed address of the respondents that could have been given by the petitioner, because factually there was no change of address, which would be obvious from the fact that in the execution proceedings initiated by the respondents, the same address was given qua the first respondent herein, i.e. M/s Satish Kumar Raghbir Chand, Commission Agents, as was also given in the appeal filed by the petitioner.

Further, the address of respondent no.2, i.e. Vikas Garg son of Satish Kumar, would also be the same, he being the Proprietor of the said firm, which can be seen from the copy of the execution petition itself (Copy Annexure P-6).

Of course, as regards respondent no.1 herein, i.e. one of the decree holder before the Execution Court, the address is seen to be the same as is given in the memo of parties in the appeal (a copy of which is annexed as Annexure P-3 with this petition); and as regards respondent no.2, Vikas Garg, though in the memo of parties before the Execution Court he is shown to be the Proprietor of the aforesaid firm, the execution application is shown to be presented “through Satish Kumar” as its Proprietor.

Be that as it may, either of the two is a mistake not made by the

petitioner herein (judgment debtor/appellant before the appellate Court), but by the respondents-decree holders, with in any case it not being denied that respondent no.2 herein, i.e. the second decree holder, is the son of the aforesaid Satish Kumar of M/s Satish Kumar Raghbir Chand, Commission Agents.

That being so, with the respondents-decree holders obviously trying to take advantage of the fact that notice at the aforesaid address was not served upon the respondents, which in the opinion of this Court was deliberate the address of respondent no.1 being the same as given in the memo of parties in the execution application and as regards respondent no.2, he, either as the Proprietor himself of the firm, or as the son of the Proprietor, would be deemed to be served upon the notice issued at the address of the Proprietorship firm itself, (with that in any case being his address given in the memo of parties in the suit).

Though learned counsel for the respondents has vehemently opposed this petition on the ground that in any case for restoration of an appeal not dismissed on merits by the appellate Court, an application under Rule 19 of Order 41 of the CPC would lie before the appellate Court, with this revision petition therefore not being maintainable, I do not agree with that contention in view of the aforesaid circumstances, where the respondents-decree holders are very obviously trying to take advantage of a report of service of notice issued in the appeal by the appellate Court, which is obviously an incorrect report.

As regards non-payment of costs imposed upon the petitioner by the appellate Court, a perusal of the order dated 2.12.2018 (copy thereof

being part of Annexure P-3 collectively), shows that the costs were also imposed for non filing of the correct address of the respondent-decree holders (also respondents before the appellate Court), and consequently, in the aforesaid circumstances, with the address actually not changed, even the costs imposed were wholly uncalled for.

Consequently, the impugned order is set aside with the appeal filed by the petitioner (appellate before the appellate Court) restored to its original number prior to its dismissal vide the impugned order, with the order dated 2.12.2018 also not deemed to not have been passed as regards imposition of costs, in the aforesaid circumstances.

Though the said order has not been specifically challenged by the petitioner, this Court while exercising jurisdiction under Article 227 of the Constitution, being seized of the subsequent order essentially based on the first order, which itself is seen to be bereft of any valid reasoning for imposition of costs in view of what has been discussed hereinafore, I see no reason to not set it aside.

The appeal is therefore allowed.

The parties would appear before the appellate Court on 20.2.2019, with that court to proceed to decide the appeal on merits.

13.2.2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No