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

CR-5910-2015 (O&M)

Date of decision : 14.01.2019

Mohinder Singh

... Petitioner

Versus

Bhupinder Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Chauhan, Advocate
for the petitioner.

Mr. Vishal Munjal, Advocate
for respondent Nos.2, 3, 5 and 7.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned orders dated 06.05.2013 (Annexure P-2), whereby the appeal preferred by the petitioner-plaintiff, against the judgment and decree dated 06.01.2012, was dismissed in default qua defendant Nos.6 & 7 and order dated 21.07.2015 (Annexure P-4), vide which, the restoration application was also dismissed.

Learned counsel for the petitioner-plaintiff submitted that defendant Nos.6 and 7, namely, Harbans Lal and Santosh Kumari, were represented through counsel i.e. Mr. Mirnal Mehta, before the trial Court. However, in the appeal, report of the service reveals that address was incorrect. This fact was evident from order dated 06.05.2013 (Annexure P-2). He further submitted that before this Court, defendant No.7/respondent is being represented by the counsel and defendant

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No.6/respondent, died, but an application for impleading his LRs bearing CM No.5655-C-II of 2018 was filed, which was allowed, vide order dated 08.08.2018 and respondent/defendant Nos.6(i) to 6(v) were served through their mother. No harm and prejudice would be caused, in case, the appeal which is pending qua other respondents, is decided on merits against all the respondents.

Learned counsel for respondent Nos.2, 3, 5 and 7 submitted the approach of the petitioner-plaintiff is just to keep the case pending and intentionally did not effect service, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Chauhan.

It would be apt to extract the relevant portion of order dated 06.05.2013, which reads as under:-

"RC/AD for the service of respondent No.6 and 7 have not been received despite various opportunities. Hence, appeal against respondents No.6 and 7 is dismissed in default under Order 9 Rule 2 CPC. Service is complete. Now record of trial Court be called for 6-7-2013."

On the perusal of the judgment and decree of the trial Court 06.01.2012, defendant Nos.6 and 7 were represented by Mr. Mirnal Mehta, Advocate. Before this Court, defendant No.7/respondent is being represented by the counsel and the legal heirs of respondent/defendant No.6 have been served through their mother, but they chose not to appear. It appears that they intentionally avoided the service. The Court below ought to have noticed all these facts.

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Keeping in view the aforementioned facts, the impugned orders under challenge, suffer from illegality and perversity and the same are hereby set aside and the appeal qua defendant Nos.6 and 7 is ordered to be restored to its original number. The lower Appellate Court is directed to decide the appeal on merits in accordance with law.

Resultantly, the present revision petition stands allowed.

14.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**