

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

CR No.607 of 2017 (O&M)
Date of Decision : 05.03.2019

Avtar Singh and another.	Versus	...Petitioners
Jasbir Kaur and others.		Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Harkesh Manuja, Advocate for the petitioners.

Mr. Hanvir Singh Manes, Advocate for respondent Nos.1 to 4.

B.S.WALIA, J. (Oral)

1. Challenge in the revision petition under Article 227 of the Constitution of India is to order Annexure P/3 dated 09.11.2015, passed by the learned Addl. Civil Judge (Senior Division), Abohar, dismissing the application under Order 9 Rule 13 of Code of Civil Procedure (hereinafter referred to as 'CPC') as well as order Annexure P/4 dated 23.11.2016, passed by the learned Addl. District Judge, Fazilka, dismissing the appeal filed against order dated 09.11.2015.

2. Brief facts of the case leading to the filing of the instant revision petition are that a civil suit for recovery of damages on account of death of Amrik Singh, husband of respondent No.1 and father of respondent Nos.2 and 3 was filed by the respondents. Summons were issued in the said civil suit on 19.10.2006 in the name of the petitioners/defendants for 30.07.2007 and were served on the

petitioners/defendants in jail on 14.03.2007 in the presence of the Jail Superintendent, who attested the service of summons on the petitioners/defendants. However, despite service of summons on the petitioners/defendants, none put in appearance on their behalf in the said civil suit, resulting in ex-parte proceedings being carried out against the petitioners-defendants and eventually passing of ex parte judgment and decree dated 20.02.2013. Application was filed under Order 9 Rule 13 CPC by the petitioners-defendants on 18.05.2013 and the same came to be dismissed on 09.11.2015. Appeal against the same was also dismissed by the learned Addl. District Judge, Fazilka vide order Annexure P/4 dated 23.11.2016.

3. Learned counsel for the petitioners/defendants contended that service of summons on the petitioners/defendants was not as per the requirement of law, since the summons had been addressed in the name of the petitioners/defendants though showing them to be confined in Jail. Learned counsel contends that the provisions of Order 5 Rule 24 CPC as well as Form-8 to Appendix-B CPC make it clear that the summons had to be issued in the name of Jail Superintendent and it is only if service of summons is effected on the defendants in the aforementioned manner that the service will be deemed to be a valid service otherwise, it will not be a service in the eyes of law. Lastly, learned counsel for the petitioners/defendants states that the petitioners have already deposited the decretal amount and that the impugned order be set aside by granting one opportunity to the petitioners to lead evidence.

4. Per contra, learned counsel for the respondents contended that sine-qua non for setting aside of an ex parte judgment is the requirement of the party moving the application under Order 9 Rule 13 CPC to show that at the time when the ex parte proceedings were ordered, the party was prevented by sufficient cause from putting in appearance. Learned counsel contends that the petitioners-defendants were proceeded ex parte on 30.07.2007, whereas service of summon on the petitioners/defendants was effected in Jail in the presence of Jail Superintendent on 14.03.2007 and in the absence of the petitioners-defendants having shown any sufficient cause whatsoever for not putting in appearance on the date fixed for appearance, no sufficient cause whatsoever was made out for setting aside of the ex parte proceedings or the ex parte judgment and decree passed against the petitioners-defendants.

5. I have considered the submissions of learned counsel for the parties.

6. A perusal of the summons issued to the petitioners/defendants reveals that the same were issued in the name of the petitioners/defendants and mentioned the name of the petitioners father, grandfather, as well as village besides of the petitioners/defendants at that point of time being lodged in Central Jail, Ferozepur. A perusal of Order 5, Rule 24 CPC reveals that where a defendant is confined in prison, summons is to be served on such defendant by delivering or sending the summons to the Officer, Incharge of the Prison for service on the defendant. A perusal of Form-8 to Appendix-B CPC further reveals that the same only stipulates transmission of summons to the Superintendent of Jail requiring it to be

served on the prisoner concerned. Neither Order 5 Rule 24 nor Form-8 to Appendix-B of the CPC supports the plea of learned counsel for the petitioners-defendants that the summon is to be issued in the name of the Superintendent of Jail. A perusal of the provisions of Order 5 Rule 24 CPC as well as Form-8 to Appendix-B CPC makes it clear that the summon is to be issued in the name of the defendant though it is to be served through the Superintendent of Jail where the prisoner is lodged. Admittedly the summons are in the name of the petitioners though the summons were served on the petitioners/defendants while they were in jail and the service was attested by the Superintendent of Jail on the said date itself. A perusal of Order 9 Rule 13 CPC reveals that where an ex parte decree is passed against a defendant such person may apply to the Court by which the decree was passed to set aside the decree by satisfying the Court that the summons were not duly served or that he was prevented by any sufficient cause from appearing in the suit for hearing. It has already been admitted by learned counsel for the petitioners/defendants that summons were served on the petitioners/defendants while they were in jail and the service of the summons on the petitioners/defendants in jail was attested by the Jail Superintendent. Therefore, it cannot be said that the summons were not duly served on the petitioners. Now the only thing which could be proved by the petitioners/defendants for getting the ex parte proceedings set aside was that they were prevented by sufficient cause when the suit was called on for hearing. However, nothing has been brought to my notice by learned counsel for the petitioners/defendants to show that the

petitioners/defendants were prevented by sufficient cause from appearing in the suit for hearing.

7. In the circumstances, in the absence of requirement under order 9 Rule 13 CPC being satisfied, the application for setting aside ex parte judgment and decree was rightly dismissed not only by the learned trial Court but also by the learned first Appellate Court.

8. Accordingly, finding no merit in the revision petition, the same is dismissed. Since the main revision has been dismissed, therefore, civil misc. applications pending, if any, also stand dismissed.

(B.S.WALIA)
JUDGE

05.03.2019

rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No