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

**Civil Revision No.6377 of 2017(O&M)
Date of Decision: 06.02.2019**

SARAVJIT KAUR

.....Petitioner

Vs

SURESH KUMAR

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Jagdish Manchanda, Advocate
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has preferred this revision petition against the order dated 15.01.2011 passed by the Civil Judge (Jr. Divn.) Pehowa, order dated 21.07.2016 passed by the Addl. Civil Judge (Sr. Divn.) Pehowa and order dated 05.09.2017 passed by the Addl. District Judge, Kurkshetra, vide which the application filed by the petitioner under Order 9 Rule 13 CPC was dismissed concurrently.

[2]. Petitioner was proceeded against ex parte vide order dated 15.01.2011, when registered cover sent to her on 02.12.2010 was not returned back. Presumption of due service

was recorded and the petitioner was proceeded against ex parte. Thereafter, the suit for possession by way of specific performance was decreed ex parte vide judgment and decree dated 14.05.2012 by the trial Court.

[3]. Petitioner filed an application under Order 9 Rule 13 read with Section 151 CPC for setting aside the order dated 15.01.2011 and ex parte judgment and decree dated 14.05.2012 passed by the trial Court. Petitioner alleged that no summon of registered envelope was ever received by her at any point of time. No *munadi* or publication was effected to serve the petitioner. Petitioner never received any summon, nor has refused to accept the same. Report of service of refusal, if any was claimed to be false and fabricated.

[4]. Petitioner further pleaded that prior to 15.01.2011, a person alleging himself to be an employee of the Court came to her house and obtained her signature and disclosed about the date of the case. When on the said date, petitioner went to the Court, she came to know that the Presiding Officer of the Court was on leave. Thereafter, no summon was ever served upon the defendant/petitioner.

[5]. The application under Order 9 Rule 13 CPC was dismissed primarily on the ground of knowledge that after having acquired knowledge from the employee of the Court,

petitioner have tried to appear in the Court on one occasion, but could not appear as the Presiding Officer was on leave. Knowledge was inferred and the application was dismissed.

[6]. At the time of issuance of notice of motion on 19.09.2017, following order was passed by the High Court:-

“Learned counsel for the petitioner, at the very outset, fairly states that although the petitioner should have been more careful and vigilant to attend the Court proceedings, yet to avoid further miscarriage of justice and also subject to payment of reasonable amount of costs to the plaintiff, petitioner deserves to be granted one opportunity to contest the suit on merits.

Notice of motion for 06.11.2017 subject to deposit of Rs.30,000/- by the petitioner with the Registrar General of this Court within a period of one week from today.

Notice re: stay as well.

Process dasti also.”

[7]. The amount as directed was ultimately deposited by the petitioner with the Registry of this Court vide draft No.227347 dated 09.11.2017. Thereafter notice was issued to the respondent, however respondent could not be served by means of ordinary process. Vide order dated 30.11.2017, respondent was directed to serve respondent by way of beat of drum at his last known address. Thereafter vide order dated 21.12.2017, respondent was ordered to be served by means of publication in two newspapers having circulation in the area by depositing requisite charges in the Registry.

[8]. After compliance of said order, publication has been

made in the newspapers namely 'The Pioneer, Chandigarh and Aaj Samaj, Chandigarh. Report to that effect has been produced on record. Despite service by means of substituted mode, there is no appearance on behalf of the respondent.

[9]. In view of above, respondent is ordered to be proceeded against ex parte.

[10]. Petitioner has already deposited an amount of Rs.30,000/- in the Registry of this Court. Petitioner could have been more careful and vigilant to the court proceedings. The name of the officer, who allegedly contacted the petitioner viz.- a-viz. name of the Court has not come forth, but still the alleged knowledge on that premise cannot be conclusively held against the petitioner.

[11]. For the reasons recorded hereinabove, I deem it appropriate to accept this revision petition. Consequently, the impugned orders are hereby set aside. Normal consequences to follow.

February 06, 2019

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No