

CM No. 7953-CII-2019 in/and
CR No. 695 of 2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No. 7953-CII-2019 in/and
CR No. 695 of 2019
Date of Decision: 23.05.2019

Jasdeep Singh

.....Petitioner

Vs.

Paramjit Singh and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. M.S. Atwal, Advocate,
for the applicant-respondent no. 1.

Mr. G.S. Jagpal, Advocate,
for the non-applicant/petitioner.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 7953-CII-2019

By this application, the applicant-respondent no. 1 seeks vacation of the interim order passed by this Court in favour of the non-applicant (petitioner in the accompanying petition), at the time when notice of motion was issued in the petition on 31.01.2019.

The interim order passed in the accompanying petition was to the effect that the interim order earlier passed by the appellate Court would continue to enure, till the next date of hearing before this Court, i.e. 11.07.2019, such interim order passed by the appellate Court on 26.11.2018 (copy Annexure P-5), being as follows:-

*“File taken up today on the application of the
appellant for staying execution proceedings by submitting*

that the trial Court has fixed next date of hearing as 28.11.2018 for report of Local Commissioner after getting executed sale deed and if it is so done, the appeal will become infructuous. Heard. In view of contents of application, same is allowed and further proceedings before the lower court shall remain stayed till 10.12.2018, date already fixed in the main appeal. However, appellant is directed to get the service of respondents effected by taking dasti summons. A copy of this order be sent to the lower court for compliance. File be put up on 10.12.2018 date already fixed.”

Notice having been issued in this application on 29.04.2019, learned counsel appearing for the non-applicant/petitioner had submitted on 16.05.2019 that the impugned order dated 23.01.2019 had been passed because the present non-applicant/petitioner had failed to get service effected on respondent no. 2, i.e. Manjit Kaur, but as a matter of fact Manjit Kaur was no longer residing in Village Jodhan and consequently, the petitioner was not aware of her new address.

Learned counsel for the applicant-respondent no. 1 on the other hand had submitted that the petitioner in the accompanying petition, being the attorney of Manjit Kaur, had even executed a sale deed on her behalf on 22.11.2017, showing her address of the aforesaid village.

Hence, the contention is that she was not being served of the notice issued by the appellate Court only to deliberately delay proceedings before the execution Court.

That being so, this Court had directed the Registry (of this Court) to give a complete report on service of notice issued in the accompanying petition at least to Manjit Kaur, including the result of the notice ordered to be issued by **dasti** process.

Pursuant to that order, the report of the Registry is to the effect that dasti notice issued to Manjit Kaur through her daughter Satinder Kaur, had been received back stating that she had refused to accept summons, with an affixation made (obviously on her premises).

It has also been stated that she stands served by way of substituted service of publication, as had been directed by this Court at the time when notice of motion was issued on 31.01.2019.

That being so, obviously, Manjit Kaur stands served as regards notice issued in the accompanying petition.

The question of vacation of the interim order passed in favour of the petitioner on 31.01.2019 being intricately linked with the main issue in the petition itself, the main petition is taken up for hearing today itself with the consent of learned counsel for the parties, with this Court having specifically asked counsel for the petitioner as to whether he would like to argue it the next week or today.

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As regards the prayer made by the petitioner seeking the setting aside of the impugned order dated 23.01.2019, learned counsel appearing for respondent no. 1 very fairly submits that as a matter of fact he has no objection to the operation of the said order remaining stayed till the disposal of the appeal before the learned appellate court, provided it is disposed of in a time bound manner.

That being the case, I see no reason to not dispose of the petition accordingly.

Consequently, this petition is disposed of with a direction to the appellate Court to ensure that the appeal pending before it is disposed of on merits by 31.08.2019, after granting time to the present petitioner to serve respondent no.

2 Manjit Kaur of the notice issued in that appeal, by way of substituted service if the petitioner is unable to provide any alternate address and to serve her by dasti process also.

Further consequently, it is also directed that fresh notice be now issued by the appellate Court (as regards the appeal pending before it), to respondent no. 2 Manjit Kaur, returnable on 05.07.2019 before that court, by dasti process through her daughter, as also at the new address to be supplied, or the last known address of Manjit Kaur, with notice to be also served by way of publication in two newspapers as per norms.

Thereafter, the appellate Court would proceed with the matter on merits and dispose of the appeal finally by 31.08.2019, as already directed hereinabove.

In the meanwhile, till disposal of the appeal, the order passed by that court on November 26, 2018, shall continue to enure in favour of the petitioner-appellant.

If however the present petitioner does not serve Manjit Kaur even by way of substituted service, then the impugned order passed by the appellate Court would become operative, thereby vacating the stay on execution proceedings.

May 23, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes