

252

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

**Civil Revision No.795 of 2019 (O&M)
Date of Decision: 13.09.2019**

Bharat Bhushan

.....Petitioner

Vs

State of Punjab and others

....Respondents

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

Present:Mr. D.S. Malwai, Advocate
for the petitioner.

Ms. Maloo Chahal, D.A.G., Punjab.

RAJ MOHAN SINGH, J.

CM No.17975-CII of 2019

Prayer made in this application is for preponment of
date of hearing of the main case.

On 06.09.2019, notice of the application was issued to
counsel opposite for today for final hearing of the case.

With the concurrence of both the parties, main case is
taken up today itself for final disposal.

Application is allowed.

Civil Revision No.795 of 2019 (O&M)

[1]. Petitioner has preferred this revision petition against the

order dated 20.12.2018 passed by the Addl. Civil Judge (Sr. Divn.) Bathinda vide which the application under Order 9 Rule 13 read with Section 151 CPC filed by the defendants for setting aside the *ex parte* judgment and decree dated 21.01.2017 passed by the Addl. Civil Judge (Sr. Divn.) Bathinda in Civil Suit No.161 dated 17.11.2015 was allowed.

[2]. Plaintiff/petitioner filed a suit for declaration to the effect that the plaintiff is deemed to have been promoted as SS Master in master cadre from the year 2006 i.e. the date of promotion of master cadre on which employees upto the year 2001 were promoted and the plaintiff is entitled to be paid consequential service benefits including pay, seniority etc. along with interest @ 18% per annum from the due date till actual realization.

[3]. In the aforesaid suit, defendants were proceeded against *ex parte* and on the basis of *ex parte* evidence, the suit of the plaintiff was decreed vide the judgment and decree dated 21.01.2017.

[4]. The application under Order 9 Rule 13 read with Section 151 was filed by the defendants for setting aside the judgment and decree dated 21.01.2017 passed by the Addl. Civil Judge (Sr. Divn.) Bathinda. Defendant No.5 was the competent authority amongst all the defendants, who was to

represent the cause of other defendants. Defendant No.5 took the following stand in para no.4 of the application:-

“4. That though no summons/process of the court was legally and properly served to the defendant No.5, but still the proceedings were conducted by the Hon'ble Court in the absence of defendant No.5 and the decree has been passed against the defendant No.5 also ex-parte without hearing and affording proper opportunity to defendant No.5.”

[5]. In reply to the aforesaid para, plaintiff/decreed holder denied the same by taking the following plea:-

“4. Para No.4 of the application as stated is incorrect, hence denied and specifically repudiated as such. Defendant No.5 was served through Naresh Kumar receipt clerk of the office of BEO, Bathinda and service was effected through Jarnail Singh Process Server on 11.1.2016. Summons bears signatures of said Naresh Kumar. On enquiry it has now come to the notice of the plaintiff that Naresh Kumar above said after receipt of summons handed over the same to Gurpreet Singh Receipt Clerk of the office of DEO Bathinda defendant No.5 who received the same on the next day i.e. 12.01.2016. It is specifically denied that defendant No.5 was not served. Complete reply has been given above.”

[6]. The Addl. Civil Judge (Sr. Divn.) Bathinda vide the impugned order dated 20.12.2018 accepted the application on the premise that summons were issued in the wrong names i.e. Block Education Officer (EE) Bathinda instead of District Education Officer (EE) Bathinda and due to mistaken belief, defendant No.5 did not appear to contest the suit. Since the provision is handmaid of justice, therefore, the indulgence was

granted by the trial Court by setting aside the *ex parte* judgment and decree dated 21.01.2017 passed by the Addl. Civil Judge (Sr. Divn.) Bathinda.

[7]. Learned counsel for the petitioner vehemently submitted that the summons were issued in the name of Block Education Officer (EE) Bathinda, but on receipt of summon, the same was sent to the District Education Officer and the same was received vide diary No.2372 dated 13.01.2016. The factum of receipt of summon has been confirmed by the office of District Education Officer (EE) Bathinda vide letter No.F-1/2017/5014/155 dated 30.05.2017 that the summons were received in the office of District Education Officer (EE) Bathinda vide Diary No.2372 dated 13.01.2016. Even in the cross-examination of Baljeet Singh, District Education Officer (EE) Bathinda, the factum of receiving the summon vide receipt No.2372 dated 13.01.2016 and further intimation to the plaintiff vide letter No.5014/155 dated 30/31.05.2017 have been admitted. The factum of intimation given to the plaintiff has been confirmed by the office of District Education Officer (EE) Bathinda vide RTI information Annexure P-8 attached with this petition.

[8]. Learned counsel further relied upon letter No.567/DA dated 01.03.2016 issued by the District Attorney, Bathinda to

Director Education Department (Sr. Sec.) Punjab, Mohali in the context of receiving instructions from the head office for defending the case and memo No.711/C.O.15(22)16 dated 20.02.2016 issued by the Director Prosecution and Litigation and Addl. Secretary, Punjab Chandigarh to District Attorney, Bathinda. The said letter was issued in continuation of earlier information dated 04.02.2016 issued from the Under Secretary to Government of Punjab School Education Department to the District Attorney, Bathinda in the context of pending civil suit for 05.02.2016 in the Court of Civil Judge (Jr. Divn.) Bathinda and instructions were issued to the District Attorney, Bathinda to defend the case on behalf of the Government of Punjab. The said letter was reminder to the earlier intimation.

[9]. By referring to the aforesaid instances, learned counsel submitted that after service of summon, even intra-departmental communication was made to the effect that there was a proper service and the competent authorities gave necessary instructions to the District Attorney, Bathinda to defend the case. Despite service and knowledge, none appeared on behalf of the defendants and the defendants were proceeded against *ex parte* and thereafter on the basis of *ex parte* evidence of the plaintiff, the suit was decreed vide judgment and decree dated 21.01.2017.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. In view of receipt of summon vide diary No.2372 dated 13.01.2016 by the District Education Officer (EE) Bathinda and further intra-departmental communication for defending the case, it can be easily noticed that defendant No.5 had the information regarding pendency of the suit and still he did not appear in the Court. Under Order 9 Rule 13 CPC, no Court shall set aside a decree passed *ex parte* merely on the ground that there has been any irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the claim of the plaintiff.

[12]. In the instant case, even though the summon was wrongly issued in the name of Block Education Officer (EE) Bathinda, but on receipt of the summon, the same was sent to the District Education Officer (EE) Bathinda which was received by the office vide diary No.2372 dated 13.01.2016. Factum of receipt of the aforesaid letter was communicated to the petitioner by defendant No.5 vide letter No.4014/155 dated 30.05.2017 under RTI Act, 2005 (Annexure P-8). Even the pendency of civil suit was noticed in the intra-departmental communication from the office of Director Prosecution and

Litigation and Addl. Secretary, Punjab Government, Chandigarh to District Attorney, Bathinda and the intimation issued by the District Attorney, Bathinda to Director Education Department (Sr.Sec) Punjab, Mohali vide letter No.567/DA dated 01.03.2016.

[13]. All these material facts could not be refuted by the respondents with reference to any material on record suggesting that defendant No.5 was not having any knowledge regarding pendency of the suit.

[14]. For the reasons recorded hereinabove, the impugned order dated 20.12.2018 passed by the Addl. Civil Judge (Sr. Divn.) Bathinda is not legally sustainable and is thus set aside. This revision petition is allowed. Normal consequences to follow.

September 13, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No