

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1173 of 2019

Date of Decision: 08.03.2019

Ranjit Singh

.....Petitioner

Vs.

Prem Parkash (deceased) through his LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Lekh Raj Nandal, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner has challenged the order dated 15.02.2018, passed by the learned District Judge, Rohtak, allowing the application filed by the respondent herein, under Order IX Rule 13 CPC, directing the trial Court to allow him to grant one opportunity to contest Civil Suit No. 105, decided on 26.07.2013.

Yesterday when the case came up for hearing, without noticing that the impugned order is actually dated 15.02.2018, i.e. more than one year ago, and that this petition has been filed on 24.01.2019, this Court had asked learned counsel for the petitioner to distinguish the judgment of this Court cited by the learned appellate Court in Dharampal Singh vs. Amar Singh and others 2013 (7) RCR (Civil) 2561, to hold that the procedure in effecting service of notice issued not having been shown to be specifically followed, the onus was actually upon the plaintiff to show that the procedure had been followed.

Today, having seen that the impugned order was passed more than one year ago, and on query put to learned counsel as to the stage of the trial, he has submitted that after the order was passed and the trial recommenced, evidence has already been led and in fact the matter is now posted by trial Court for hearing on 11.03.2019, for final orders.

That being so, other than the fact that I respectfully agree with the reasoning given in the judgment of a co-ordinate Bench in **Dharampal Singhs'** (*supra*), I see absolutely no reason to reverse the order of the learned appellate Court allowing the application filed under Order IX Rule 13 CPC, filed by the respondent herein.

For the record, what has been held by this Court in the aforesaid judgment, is essentially to the following effect:-

“If there was a Court endorsement that a party had refused to receive the summon even then, there is no presumption of the correctness of the refusal unless the bailiff himself had been examined in Court to speak about the fact of refusal by the party. Order 5 of the Civil Procedure Code which sets out the procedure for issuance and service of summons, requires the summons to be served at the place where a person is normally resident. Rule 6 enjoins that the Court shall fix a day to allow the defendant sufficient time to enable him to appear and answer on such day. Rule 17 sets out a procedure when defendant refuses to accept the service or when he cannot be found. The said rule mandates that the serving officer shall affix copy of the summons on the outside space or conspicuous part of the house in which the defendant ordinarily resides or carries on business and the summons shall be returned to the Court from which it

was issued with the report endorsed thereon stating that he so affixed the copy and the circumstances under which he did so. Rule 18 requires the bailiff to set out the endorsement, the time and manner in which the summons were served. Rule 19 states that when a summon is returned under Rule 17 (when the summons is refused), the Court shall, if the return under which the rule has not been verified by the affidavit of the serving officer or if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit. Rule 19, therefore, does not make an endorsement as final and mandates the Court to require the examination of the serving officer .”

That being so, and in any case the suit having reached its absolute final stage, after the application under Order IX Rule 13 was allowed more than one year ago, I see no reason to entertain this petition, which is consequently dismissed *in limine*.

March 08, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes