

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

**SAO No.32 of 2019 (O&M)
Date of Decision: April 11, 2019.**

Mani Ram

.....APPELLANT(s).

VERSUS

Avtar Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jasinder Singh Thind, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Appellant filed suit seeking the relief of specific performance of the agreement, which was decreed ex parte. Respondent-defendant filed application seeking setting aside of ex parte judgment and decree, which was dismissed by the trial Court vide order dated 04.05.2016. His appeal was allowed by Additional District Judge, Sirsa with the observations that the service of respondent-defendant in the civil suit was not duly proved.

Learned counsel for the appellant has argued that the suit was filed in the year 2009. Before filing the suit, a notice was given to the respondent-defendant and he, when appeared as AW2, had admitted his signatures on the photocopy of the notice. Service of summons in suit was duly proved by the statement of process server, who appeared as PW2. First

Appellate Court has not relied on the statement of process server on the

ground that none had identified the respondent-defendant at the time of service of summons. The order passed by the first Appellate Court is not sustainable and has added to the miseries of the appellant, who has been litigating for the last about 10 years.

In support of his plea that service of summons was duly effected upon the defendant, the appellant-plaintiff examined process server, who effected the service of summons in the civil suit as RW2. Process Server has proved his report about service of summons upon the defendant but has stated that he was not knowing Avtar Singh, defendant personally and no identification, on the summons about the identity of the person whose signature was obtained on the summons, was taken. Summons were also sent through registered letter but no evidence was produced on file to show that registered letter was ever delivered to the respondent-defendant. Keeping in view all these facts and circumstances, learned first Appellate Court arrived at the conclusion that service of summons on the respondent-defendant was not duly proved; there are triable issues in this case and for proper adjudication, defendant is provided opportunity to put forth his case and lead evidence.

In view of the facts and circumstances as discussed above, I do not find any reason to disagree with the finding of the first Appellate Court and interfere with the well-reasoned order dated 20.12.2018 remitting the case to the trial Court with direction to dispose of the same in accordance with law.

This appeal has no merits. Dismissed.

As the matter is quite old, the trial Court will proceed with the

case expeditiously and dispose of the same at the earliest, preferably within one year, on receipt of copy of this order.

April 11, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>