

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

FAO-442-2014 (O&M)

Date of Decision: 4.12.2019

Jyoti Sarup

.....Appellant

Versus

Municipal Corporation, Jalandhar

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Puneet Sharma, Advocate, for the appellant.

Mr. Anil Sharma, Advocate, for the respondent.

NIRMALJIT KAUR, J. (ORAL)

The present appeal is filed against the order dated 9.12.2013, vide which, the application of the petitioner for setting aside the *ex parte* order dated 9.4.2002 was dismissed.

While praying for setting aside the said order, learned counsel for the appellant submitted that he was never served as the service, which was stated to have been effected on the address '8, New Adarsh Nagar, Jalandhar' was admittedly obtained from some neighbour of his earlier house, where, he was residing i.e. WM-243, Basti Guzan, Jalandhar City and the said summons were received back with the report of refusal and the respondent has not been able to prove as to whether the same was refused by the appellant or someone else at his behest or because it was served on some other resident, who refused to accept as they are not persons, in whose name such summons were sent.

Learned counsel for the respondent vehemently opposing the

same has also relied upon the finding of the trial Court recorded in Para No.7 that it must have been the appellant and none else because, there is no reasons to obtain a false report as the respondent-Corporation has nothing personal against the appellant and they would not go into such an effort to obtain such a report.

Learned counsel for the parties were heard at length.

It is not disputed that the new address i.e. 8, New Adarsh Nagar, Jalandhar was given by the neighbor, where, the appellant was stated to be earlier residing. Therefore, there is no guarantee or authentication of the address to be correct.

On the other hand, learned counsel for the appellant had placed on record the voter lists for the years 1996 and 2002 (Annexure A-3) to show that his address was never 8, New Adarsh Nagar, Jalandhar and as per the said voter list, the names mentioned against the said address are different and the appellant is not shown to be one of them.

There is also nothing to show that the summons were refused by the appellant or someone else. There is another way to look at it. Admittedly, the appellant had succeeded before the trial Court and the appeal was filed by the respondent-corporation. The appellant having won from the Court below, there is no reason as to why he would allow the appeal to proceed ex parte and get an order against himself or he would not want to defend an order, which is passed in his favour.

Accordingly, the order dated 9.12.2013 is set aside. The consequence of the said order is obviously that the order dated 9.4.2002 deciding the appeal be also set aside and the matter is remanded back to the

Appellate Court to decide the same afresh on merits.

The parties shall appear before the learned Appellate Court on
8.1.2020.

(NIRMALJIT KAUR)
JUDGE

4.12.2019
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No