

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

101

CR No.4414 of 2016 (O&M)

Date of decision:9.5.2019

Rakam Singh

... Petitioner

versus

Ritu Goel

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Manoj Pundir, Advocate,
for the petitioner
Mr.Shranav Katyal, Advocate,
for the respondent
...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner challenges the order of the learned Civil Judge (Junior Division), Karnal, dated 4.3.2016, by which his application seeking that the order passed on 27.5.2015 proceeding against him *ex parte* be recalled, was dismissed.

As per the impugned order, the petitioner appeared to have acted 'in an intentional manner' in not letting the service of notice issued to him being effected and eventually he was deemed to have been served by way of substituted service of publication through newspapers.

Upon a report having been called for by this Court from the Civil Judge concerned through the District Judge, Karnal, a perusal thereof shows that firstly of course the Civil Judge has not named the petitioner correctly. Secondly, upon notices/summons issued, there was a report of the house at “Gairabad” being closed, which name is stated at three places in

the report though Gairabad is not seen to be a place in any of the addresses given in the suit filed by the respondent-plaintiff, such addresses being “Village & P.O. Rahra, Tehsil & District Karnal (Haryana)” and “House no.1205-P, Sector 7, Urban Estate, Karnal (Haryana)”.

Upon query to learned counsel for the parties, they are both *ad idem* that “Gairabad” was never any alternative address of the petitioner given in the suit, which would be equally obvious from a perusal of a copy of the plaint which is available as Annexure P-1 with the present petition.

The Civil Judge (Junior Division), Karnal, who has sent the report is directed to explain as to why he has mentioned the place Gairabad at 3 places in his report dated 11.3.2019, he also having given the petitioners' name as 'Ramam Singh'.

It would seem to be very obvious that the Civil Judge never bothered to even read the report carefully when sending it.

Be that as it may, as regards merits of the case, it would be difficult to determine as to whether it was the petitioner who was deliberately avoiding service or it was actually the respondent-plaintiff who was trying to ensure that the petitioner-defendant does not get served of the notice issued, though normally that would not be the case because it would generally be in the interest of the plaintiff to not serve the respondent, though of course if he is eventually proceeded *ex parte*, naturally then the plaintiff obviously stands in an advantageous position.

However, a reference to the report of the Process Server dated 29.2.2015, a copy of which has been annexed as a part of Annexure P-2 collectively with the petition, shows that it was reported that upon visiting

the aforesaid house in Sector 7, Urban Estate, Karnal, he was verbally told by the Watchman that no person by the name of Rakam Singh lives in the house, and that in fact the tenant living there was Jarnail Singh, a contractor.

As per the report, the Watchman also refused to sign the summons (it being stated that he denied to give witness on the report).

Keeping in view the facts and circumstances, giving 'the benefit of doubt' to the petitioner, with it not clear as to whether it was actually he who had deliberately avoided service of notice issued to him, or service was not effected properly due to any connivance of the plaintiff with any process server, it also having been stated in the report of the Civil Judge (Junior Division), dated 11.3.2019, that twice there was no report given as regards the first address given in the memo of parties of the suit (of Village Rahra, Tehsil & District Karnal), the impugned order stands set aside, with the trial to now proceed from the stage immediately prior to the date that the petitioner was proceeded against *ex parte*.

It is also made clear that the petitioner would file his written statement within 15 days from today, with the counsel for the petitioner to inform him of the order of this Court specifically. The trial Court would thereafter conclude the trial positively within a period of 7 months, excluding the time taken by the plaintiff or his counsel by seeking any adjournment.

Adjournments, if necessary to be given to the petitioner-defendant or his counsel, would be of a very short duration, and if the Court finds that unnecessary adjournments are being sought, it shall refuse such

adjournments.

The petition is thus allowed in the aforesaid terms.

The case file of this petition be put up on 30.05.2019, for the Civil Judge (Junior Division), Karnal, (through the District Judge, Karnal), to give his comments on what has been observed by this Court hereinabove, as regards the report dated 11.3.2019.

9.5.2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No