

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

129

**CR No. 180 of 2020
Date of decision : 13.1.2020**

Surinderjit Singh

.....Petitioner

Vs.

Pritpal Singh

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Aul Jain, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

The present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 3.1.2020 passed by the learned Additional District Judge, Patiala, whereby, by allowing the appeal filed by the respondent against the order dated 9.11.2017; vide which application under Order 9 Rule 13 CPC was dismissed, the case has been remanded to the Trial Court.

While referring to the pleadings in the application and the order passed by the Court, learned counsel for the petitioner has submitted that the defendant/respondent had due knowledge of the pendency of the suit. In the year 2015 in another suit, the defendant/respondent had even admitted qua the knowledge of the pendency of the present suit in his cross-examination in that suit. Despite that the defendant/ respondent had chosen not to contest the proceedings in the present suit. Still further, it is submitted by the counsel that since the defendant/respondent had refused to accept the service, the Court had gone to the extent of effecting the service through *munadi* as well. Both these documents of refusal of service and of *munadi*, are very much on file of the

trial Court. Hence, the defendant/respondent was duly served. Despite having been served, the defendant had chosen not to contest the proceedings and the ex-parte decree was passed against him. Even the execution petition for getting the said decree executed had been filed. In those execution proceedings, the defendant/respondent had filed objections. However, the said objections stand dismissed right upto the High Court.

Having heard learned counsel for the petitioner and having perused the file, this Court does not find any substance in the argument of learned counsel for the petitioner. Although it has been pleaded and so recorded in the orders by the Court below that the defendant/respondent was proceeded ex parte by the trial Court vide order dated 6.5.2014 and the defendant/respondent was cross examined in abovesaid another suit on 14.7.2015 where he had admitted knowledge of proceedings of the present suit, however, it is not even disputed that even in the said cross examination, there was no specific suggestion to the defendant/respondent that he had been proceeded ex parte in the present proceedings and that he was aware of having been proceeded ex-parte. Therefore, merely because the defendant/respondent had not denied the suggestion qua the knowledge of the pendency of the suit involved in the present proceedings, would not mean either the service of the summons qua the present suit upon the defendant/respondent or the knowledge qua the fact of defendant having been proceeded ex parte.

Although learned counsel for the petitioner has submitted that the record of the trial Court shows that the defendant/respondent had refused to accept the summons and thereafter, the *munadi* was also conducted, however, this fact has not been proved in application moved for setting aside the ex parte

decree and the ex-parte proceedings, by examining either the concerned process server or the person who conducted the alleged *munadi*. Therefore, this Court does not find any illegality or irregularity in the observations made by the lower Appellate Court to the effect that the trial Court has, primarily; proceeded on the assumption that the defendant/respondent had the knowledge of the suit involved in the present proceedings, and therefore, the same cannot be sustained in the eyes of law.

Accordingly, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

13.1.2020

Ashwani

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