

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

**CIVIL REVISION No.107 of 2020 (O&M)
DATE OF DECISION : 10th JANUARY, 2020**

Karamjit Kaur & another

.... Petitioners

Versus

Sukhpal Singh & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Ashish Gupta, Advocate for the petitioners.

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RAJBIR SEHRAWAT, J. (Oral)

This revision petition under Article 227 of the Constitution of India has been filed by the petitioners praying for setting aside order dated 07.09.2019 (Annexure P-7) passed by the Additional District Judge, Faridkot, whereby the appeal filed by the respondents/defendants has been accepted and the judgment/order dated 18.08.2018 (Annexure P-5) passed by the Civil Judge (Junior Division), Faridkot has been set aside and the application dated 19.04.2016, filed by the respondents-defendants under Order 9 Rule 13 CPC, has been allowed.

Referring to the pleadings in the petition and the orders passed by the court below, the counsel for the petitioners has submitted that the well reasoned order passed by the trial court, dismissing the application filed by the defendants/respondents for setting aside the *ex-parte* proceedings against them, has been wrongly reversed and the appeal filed by the defendants/respondents has wrongly been allowed, without properly appreciating the evidence on file. It is further submitted

that the defendants/respondents were duly served before being proceeded *ex-parte*. They had refused to accept the summons. On report to that effect only, the trial court had proceeded *ex-parte* against the respondents. Still further, it is submitted that respondents have not even pleaded as to how they came to know of the factum that they were proceeded *ex-parte* and that the judgment and decree have been passed against them. Still further, it is submitted that once the judicial order has come on the file to the effect that the defendants were duly served, then the said order has to be taken as rightly passed.

Having heard learned counsel for the petitioners and having perused the case file, this court does not find any substance in the argument of the learned counsel for the petitioners. This court finds that the lower appellate court has recorded a finding that even the copy of the summons; upon which the alleged report regarding refusal was endorsed by the process server, is not on the judicial file. Still further, it has been recorded by the lower appellate court that even the report of the Ahalmad regarding receiving of the summons with the report of the refusal of the service by the defendants or qua the affixation thereof, is not available on file. Hence, the lower appellate court has not committed any illegality or perversity in allowing the application for setting aside the *ex-parte* proceedings and the consequent decree. Although, the learned counsel for the petitioner has submitted that there is a judicial order showing that the defendants/respondents were duly served, however, it has to be kept in mind that the said order is not supported by the documents; like the service report and the copy of the summons, which should have been on the file to support such an order. Hence, the presumption attached to the

correctness of the judicial order, stands deprived to the said order. The defendants/respondents have even led positive evidence to show that they were not served. Hence, the claim of the respondents/defendants cannot be declined only on the ground that there is judicial order on the file qua proceeding *ex-parte* against them.

Still further, although the counsel for the petitioners has submitted that the respondents/defendants have not disclosed as to how they came to know of the *ex-parte* proceedings, however, this assertion is factually incorrect. It has been pleaded and deposed by the defendants that they came to know of the *ex-parte* decree on 04.05.2016 from Tirath Singh son of Kahan Singh, who is relative of the plaintiffs. Thereafter, they inspected the file and came to know that an *ex-parte* decree as well as order has been passed against them. Otherwise also, this fact pales into insignificance, in view of the fact that there is no record on the judicial file, showing that defendants/respondents were served through any process of law. Even the requirement for effecting any substituted service, as prescribed in the CPC, were not complied with before resorting to the weak type of service through alleged *munadi*.

Hence, agreeing with the findings recorded by the lower appellate court, this court does not find any ground to interfere with the order passed by the court below. Accordingly, the present petition is dismissed.

10th JANUARY, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No