

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

**CR No. 1122 of 2020 (O&M)
Date of Decision: 17.02.2020**

Saroj Petitioner
Versus

Kartar Singh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ranvir S.Chauhan, Advocate
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

The present petition has been filed challenging the order dated 14.10.2019 passed by the trial Court, whereby, the application filed by the petitioner/defendant No. 1 in the suit, for setting aside the ex-parte proceedings dated 19.05.2018, has been declined.

The facts of the matter in brief are that the plaintiff had filed a suit for specific performance of an agreement for sale of a shop, allegedly, entered into by the petitioner. In that proceedings, the service was stated to have been effected upon the petitioner/defendant No. 1 through her son. However, she had not appeared. Thereafter, even the 'Munadi' is stated to have been conducted. Despite that, the petitioner had not appeared to contest the proceedings. Therefore, she was proceeded ex parte. The petitioner applied for setting aside of the order of proceedings of ex parte. However, the same has been declined by the trial Court by giving the reasons that she was already served, as mentioned above.

While arguing the case, learned counsel for the petitioner has submitted that the service has not been duly effected upon the petitioner.

Even as per the record, the service is shown to have been effected through the son of the petitioner. However, the son of the petitioner is a minor. The counsel has relied upon the matriculation certificate of son of the petitioner, which is attached with the present petition as Annexure P-9, to contend that the son was minor. It is also submitted that even as per the provisions of CPC, service could have been valid only if the same was claimed to have been effected through some adult family member. Hence, the service was not properly effected upon the petitioner. It is further submitted that even though the munadi was conducted, the petitioner could not come to know of all the proceedings because her husband was suffering from heart ailment. The petitioner was intensively engaged in taking care of her husband. To show the ailment of her husband, the counsel has relied upon the treatment record of the husband of the petitioner, which is attached at Annexure P-7 with the petition. In the end, the counsel for the petitioner has submitted that no prejudice would be caused to the plaintiff, in case, the petitioner is allowed to join the proceedings. The counsel has produced a copy of the order dated 31.01.2020 to submit that the case is still at the initial stage of plaintiff's evidence. In fact, the evidence of the plaintiff is yet to start. Hence, it is prayed that the impugned order be set aside and the petitioner be permitted to contest the suit by joining the proceedings from the initial stage.

Having heard learned counsel for the petitioner, this Court find substance in the argument of the counsel that the service effected upon the petitioner through her son was not proper service. The record shows that the son was minor on the date when the summons were served upon him.

However, this Court finds nothing illegal or irregular in the observation of

trial Court qua service on the petitioner through the process of munadi. Hence, per se, the order passed by the trial Court does not suffer from illegality as such.

However, the petitioner is the contesting defendant in the suit and the petitioner has also placed on record the treatment record of her husband to show that she might not be aware of the munadi due to her pre-occupation with the treatment of her husband. Even after coming to know of the munadi, the petitioner might not have been able to appear before the Court due to the aforesaid unfortunate problem which had fallen upon the petitioner. Hence, it would not be unjustified if the petitioner is granted one opportunity, to join the proceedings from the stage of filing of the written statement, however, by putting her to appropriate financial burden.

In view of the above, the present petition is allowed. The impugned order is set aside. The trial Court is directed to grant one effective opportunity to the petitioner to file her written statement and to join the proceedings thereupon, subject to payment of Rs. 5,000/- as cost. The cost is ordered to be deposited with District Legal Services Authority, Hisar within a period of two weeks.

It is further clarified that the trial Court shall grant the opportunity to the petitioner to file written statement only when she produces before that Court, the receipt of having deposited the cost, as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

17.02.2020
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	No