

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

CR-4929 of 2018 (O&M)

Date of decision: 17.11.2021

Ramesh Kumar Jain

...Petitioner

Versus

Davinder Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Priyanshu Kamra, Advocate
for the petitioner.

H.S. MADAAN, J.

Case taken up through video conferencing.

As per office report, service of respondent has been got effected through his power of attorney Vijay Kumar and notice issued through counsel representing him in the trial Court received back with the report that such counsel is not in contact with the parties. In addition, notice has been issued through courier service and registered AD post also. In that way, respondent is declared to be duly served. Nobody has put in appearance on his behalf. He is proceeded against ex parte.

I have heard learned counsel for the revisionist besides going through the record.

Briefly stated facts of the case are that, plaintiff Davinder Singh had filed a suit for recovery against defendant Ramesh Kumar Jain, who is revisionist before this Court. Notice of the suit was given to the defendant for 16.11.2009. It was not received back. Fresh notice was

ordered to be issued for 19.01.2010 through registered AD post. The registered envelope containing the notice was not received back and the case was adjourned to 18.02.2010 for awaiting its fate. On that date also, the registered envelope containing the notice was not received back. Though a period of 30 had expired, drawing presumption under Order 5 Rule 19-A CPC of due service, defendant was declared to be duly served. Since he had not come present, he was proceeded against ex parte.

After recording the ex parte evidence, the trial Court, vide judgment and decree dated 28.04.2011 decreed the suit. Thereafter, the defendant put in appearance in the trial Court and moved an application under Order 9 Rule 7 and 13 read with Section 151 CPC for setting aside of ex parte order dated 18.02.2010 and ex parte judgment and decree dated 28.04.2011.

Notice of that application was given to the plaintiff/respondent, who put in appearance, opposed the application. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence. After hearing arguments, the trial Court dismissed the application, finding it to be without merit.

The defendant had assailed that order by way of filing an appeal before District Judge, Sangrur, which was assigned to Addl. District Judge, Sangrur, who vide judgment dated 15.03.2018 had dismissed the same.

Still feeling aggrieved, the defendant has filed the present revision petition, notice of which was given to the plaintiff/respondent but he has not put in appearance.

I find that both the Courts below on appreciation of the evidence adduced by the parties has come to a clear conclusion that the defendant was duly served but had not put in appearance before the trial Court and was rightly proceeded against ex parte. Such conclusion drawn by the trial Court and first Appellate Court do not call for taking of any different view. The judgments/orders passed in that regard are quite detailed, well reasoned and do not suffer from any illegality or infirmity, much less apparent on the face of such orders.

The plea raised by the revisionist that the address of revisionist as furnished by the plaintiff was that of Abohar, District Ferozepur but the PIN number was of Ludhiana, as such, the notice could not have reached him and he was wrongly proceeded against ex parte, did not find favour with the Courts below. The trial Court while taking the revisionist/defendant to be duly served has placed reliance on Order 5 Rule 9(3), Section 114 of Evidence Act to the effect that common course of business has been followed in particular case and Section 27 of General Clauses Act, 1897, that service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post. Even if it is taken that the PIN number was wrongly mentioned, it is not so with regard to remaining address of defendant and the postal authorities could very well note and come to know about the address rather than acting upon the PIN code number alone. The envelope containing the notice had not been received back on account of wrong

address, therefore, the plea raised by revisionist/defendant that he was not duly served inasmuch as he had not received the notice sent by the trial Court as per registered AD post and he came to know about passing of ex parte order dated 18.02.2010 and ex parte judgment and decree dated 28.04.2011 in the middle of July 2011 only, does not seem believable. Therefore, no reason is there to interfere with the impugned orders passed by the Courts below. The revision petition stands dismissed being without any merit.

17.11.2021

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(H.S. MADAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No