

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.675 of 2021 (O&M)

Date of Decision : 22.03.2021

Sohan Singh

....Petitioner

VERSUS

Darshan Singh

....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. P.K. Ganga, Advocate for the petitioner

ALKA SARIN, J.

Heard through video conferencing.

The present civil revision petition has been filed under Article 227 of the Constitution of India to challenge the order dated 11.09.2020 (Annexure P-13) passed by the Trial Court allowing the application filed by the defendant-respondent under Order IX Rule 13 CPC for setting aside the *ex-parte* judgment and decree dated 12.08.2016.

The facts relevant to the present *lis* are that in February 2016 the plaintiff-petitioner filed a civil suit for recovery of Rs.56,000/- (Rs.50,000/- principal + Rs.6,000/- interest) against the defendant-respondent. Notice of the civil suit was issued to the defendant-respondent but he did not appear and was proceeded against *ex-parte* vide order dated 06.05.2016. The civil suit was decreed vide judgment and decree dated 12.08.2016 (Annexure P-4). In November 2016 the plaintiff-petitioner filed an execution petition in which the defendant-respondent put in appearance through counsel on 01.07.2017. Immediately, the defendant-respondent also

filed an application (Annexure P-11) under Order IX Rule 13 CPC for setting aside the *ex-parte* judgment and decree dated 12.08.2016.

The case as set-up by the defendant-respondent in his application (Annexure P-11) was that he is a permanent resident of Ward No.12, Mohalla Ramgharia, Kotkapura, Tehsil and District Faridkot (Punjab) and on 09/10.05.2017, he received summons through registered post and when he contacted his counsel with a copy of the summons on 20.05.2017, he learnt that the same pertained to a judgment and decree for recovery of Rs.56,000/- which had been passed against him. The defendant-respondent obtained the relevant documents by 26.05.2017 and was shocked to know that he had been proceeded against *ex-parte* on 06.05.2016 in the civil suit though the summons were never served upon him as they were sent through registered post to City Faridkot though his correct address is of Kotkapura. It was averred that the defendant-respondent had no knowledge about the civil suit pending against him so he could not appear in it and that the order dated 06.05.2016 and the judgment and decree dated 12.08.2016 had been passed behind his back, without his knowledge and without service of summons upon him. The defendant-respondent had contended that the plaintiff-petitioner had intentionally got the summons issued on the wrong address to misguide the Trial Court and to avoid the contest of suit by applicant. According to the defendant-respondent, in 2015 he sought the help of the plaintiff-petitioner to file a criminal complaint against certain persons and engaged Shri Pawan Kumar Sharma, Advocate for filing the case for him and at that time his signatures were taken on various blank papers and power of attorney. However, in criminal complaint a compromise

was effected between the accused persons and the defendant-respondent and he withdrew the criminal complaint. However, the plaintiff-petitioner demanded a share out of the settlement amount which the defendant-respondent refused. Later, by using the signed blank papers, which were given at the time of filing the criminal complaint, the plaintiff-petitioner forged and fabricated a receipt dated 20.07.2015 and on the basis of the same the *ex-parte* judgment and decree dated 12.08.2016 were passed.

The plaintiff-petitioner filed a reply (Annexure P-12) to the said application and contested the same raising preliminary objections. It was contended that the defendant-respondent was aware about the pendency of the civil suit against him and kept on watching the proceedings from outside the Court and intentionally did not appear. It was stated that the summons in the civil suit were served upon the defendant-respondent through registered post at his correct address and that the falsity of the claim of the defendant-respondent was evident since he was duly served at the same address in the execution petition. The plaintiff-petitioner further averred that in the criminal complaint which the defendant-respondent had to file, he (the defendant-respondent) could not pay the counsel fee and due to their old acquaintance the plaintiff-petitioner had advanced Rs.50,000/- to the defendant-respondent and in lieu of same he executed receipt dated 20.07.2015 in his favour in presence of witnesses. Later on the defendant-respondent refused to repay the amount so the civil suit for recovery was filed.

On completion of the pleadings, the Trial Court framed the following issues on the application Annexure P-11 :

- (1) Whether the *ex-parte* judgment and decree dated 12.08.2016 are liable to be set-aside ? OPA
- (2) Whether the application is not maintainable in the present form ? OPR
- (3) Whether the applicant has no *locus-standi* to file the present application ? OPR
- (4) Whether the application is time barred ? OPR
- (5) Relief.

Both the parties led their respective oral as well as documentary evidence and vide impugned order dated 11.09.2020 (Annexure P-13) the Trial Court allowed the application (Annexure P-11) *inter-alia* holding that the plaintiff-petitioner had failed to prove to satisfaction of the Court that the defendant-respondent was duly served for 06.05.2016 in the civil suit. The Trial Court set-aside the order dated 06.05.2016 and the *ex-parte* judgment and decree dated 12.08.2016. Hence, the present civil revision petition.

Learned counsel for the plaintiff-petitioner has contended that the impugned order is illegal and arbitrary. According to him, since the defendant-respondent was served in the execution petition at the same address as given in the civil suit, the Trial Court erred in holding that the defendant-respondent was not served in the civil suit. Learned counsel for the plaintiff-petitioner contended that the facts of the case made it clear that the defendant-respondent was aware about the pendency of the civil suit against him but deliberately did not put in appearance despite being served with the summons.

I have heard learned counsel for the plaintiff-petitioner and with his assistance have gone through the paper-book. The core issue is whether the defendant-respondent could be deemed to having been served in the civil

suit and that he, despite being served, did not put in appearance so that the Trial Court could proceed against him *ex-parte* on 06.05.2016.

The address of the defendant-respondent given in the plaint of the civil suit (Annexure P-2) is the same as given in the execution petition (Annexure P-5). The details of the defendant-respondent given in the plaint are “*Darshan Singh son of Lal Singh son of Kala Singh r/o Ward No.12, Mohalla Ramgaria village Bakarbandi Kotkapoora Tehsil and Distt. Faridkot, Punjab*”. The summons were sent to the defendant-respondent in the civil suit when it was filed. These summons were sent on 06.02.2016 to Kotkapura as is discernable from the computerized postal receipt attached as a part of Annexure P-3. However, since the defendant-respondent remained unserved, on 01.04.2016 the Trial Court ordered issuance of fresh notice to the defendant-respondent for 06.05.2016 *via* registered post. However, unlike the earlier summons which were sent to Kotkapura, these summons were sent to Faridkot as is discernable from the handwritten postal receipt attached as a part of Annexure P-3. The learned counsel for the plaintiff-petitioner has not been able to explain why the summons were sent to Faridkot on 01.04.2016 and why the postal receipt is handwritten when the other postal receipts produced before this Court are all computerized. The person who wrote this handwritten receipt was also not produced.

Further, in the present case there is nothing on record to indicate that there was an acknowledgment purporting to be signed by the defendant-respondent or his agent or an endorsement by a postal employee that the defendant-respondent or his agent refused to take delivery of the summons.

In the impugned order (Annexure P-13) it has been recorded that the record

keeper (RW1) who brought the original file of the civil suit admitted that neither the AD or receipt of acknowledgement was placed on the file with regard to service of summons on the defendant-respondent. The impugned order (Annexure P-13) also shows that no person was produced from the postal department either in the civil suit or in the proceedings under Order IX Rule 13 CPC to prove the service of summons on the defendant-respondent. On 06.05.2016 the Trial Court, thus, could not have presumed service of summons on the defendant-respondent and proceeded against him *ex-parte*.

In view of the discussion above, this Court finds no error in the exercise of jurisdiction and discretion by the Trial Court below while dealing with the application filed by the defendant-respondent under Order IX Rule 13 CPC. The defendant-respondent was never served properly through registered post on his correct address for 06.05.2016 and the *ex-parte* proceedings against him were invalid. The present civil revision petition is devoid of any merit and is dismissed.

Dismissed.

(ALKA SARIN)
JUDGE

22nd March, 2021
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO