

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

CR-3124-2019(O&M)

Date of decision:-16.11.2021

Harbhajan Singh

...Petitioner

Versus

M/s J.D. Trading Company

...Respondent

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

Present: Mr.B.P.S. Virk, Advocate
for the petitioner.

None for the respondent.

H.S. MADAAN, J.(ORAL)

1. This revision petition is directed against order dated 1.2.2019 passed by District Judge, Kaithal and order dated 30.5.2016 passed by Additional Civil Judge(Sr.Divn.), Guhla vide which both the Courts had declined to set aside the ex-parte order dated 1.2.2010 and ex-parte judgment and decree dated 21.11.2012.

2. Briefly stated, the facts of the case as those transpired from the record are that plaintiff M/s J.D. Trading Company, Commission Agents, Anaj Mandi, Cheeka through its partner Jagdish Chand had filed a

suit for recovery of Rs.1,86,325/- against defendant Harbhajan Singh; notice of that suit was given to the defendant; he was served through publication but did not put in appearance, as such was proceeded against ex parte vide order dated 1.2.2010; after recording of ex-parte evidence, the suit was decreed vide judgment and decree dated 21.11.2012. Thereafter, the defendant filed an application under Order 9 Rule 13 CPC seeking setting aside of ex-parte judgment and decree stating that he had not received any summons in this case and was not duly served; as a matter of fact, he had never refused to receive the summons and report of refusal on the summons is totally wrong procured by the plaintiff in connivance with the Process Server; the newspaper in which the notice with regard to pendency of the suit was published does not have wide circulation in village Randhawa, District Patiala; on coming to know about the passing of judgment and decree ex-parte, the defendant had filed an application for setting aside of the order declaring him ex-parte and judgment and decree. That application was contested by the plaintiff and was dismissed by the trial Court vide judgment dated 30.5.2016.

3. Feeling aggrieved, the defendant had filed an appeal against that order, which was also dismissed by learned District Judge, Kaithal vide judgment dated 1.2.2019.

4. Still feeling dissatisfied, the revisionist/defendant has approached this Court by way of filing the instant revision petition.

5. I have heard learned counsel for the revisionist besides going through the record and I do not find any merit in the revision petition.

6. The revisionist/defendant had approached the Court for

setting aside of ex-parte order as well as ex-parte judgment and decree contending that he was never personally served in the case inasmuch as he had not refused to accept the service of summons and furthermore, his service was not got effected through substituted means because the newspaper in which the Court notice was published does not have wide circulation in the place, where the defendant has been residing. However, learned trial Court has dealt with all these aspects in detail and then disagreed with the defendant. Learned District Judge, Kaithal did not take any view different from that of the trial Court. Whereas in the present revision petition, the matter is again sought to be re-agitated. However, I do not find anything wrong with the impugned orders, which are quite detailed and well reasoned. The trial Court has taken a view that since the applicant/defendant was raising an issue that he had not refused to accept the service, he should have examined the Process Server in support of that contention, which he failed to do. However, according to learned counsel for the revisionist, it was for the plaintiff to examine such Process Server to prove that the applicant had in fact refused to accept summons. In support of his that contention, learned counsel for the revisionist has referred to various judgments i.e. **Pawan Kumar Versus Rajinder Kumar and another, 2018(3) PLR 178, Naveen Kumar Versus Sanjana and others, 2017(1) PLR 485, Karnail Singh Versus Dina Nath and others, 1985(2) PLR 477, Sushil Kumar Sabharwal Versus Gurpreet Singh, 2002(3) RCR(Civil) 431, Bijender Singh Versus Rambir Singh and ors., 1991(2) RCR(Rent) 124 and Venkatesh Versus P. Subbaiah & Anr., 2009(5) RCR(Civil) 54.** However, I find that it was for the

applicant/defendant to prove his case that he was not duly served and his non-appearance in the trial Court on the date fixed for his appearance was not intentional or wilful. Unless the applicant/defendant proves this fact, the application for setting aside of ex-parte order, proceedings as well as ex-parte judgment and decree could not possibly be accepted.

7. I find that the impugned judgments passed by the trial Court are detailed and well reasoned, which do not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

8. Thus, finding no merit in the civil revision petition, the same stands dismissed.

16.11.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No