

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

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IN VIRTUAL COURT

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**CR No. 333 of 2022
Date of decision : 2.2.2022**

Sukhchain Singh

.....Petitioner

Vs.

Chhinda Singh and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Nitin Rampal, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 27.10.2021 (Annexure P-3), passed by the Civil Judge (Junior Division), Ferozepur, whereby the application of the petitioner for setting aside the ex-parte order dated 3.12.2018 was dismissed. It is also prayed that the application of the petitioner/defendant No.2 for setting aside the ex parte order dated 3.12.2018 be allowed.

A perusal of the impugned order shows that the petitioner was defendant No.2 in the suit and he was proceeded ex-parte vide order dated 3.12.2018. Before proceedings ex-parte, the efforts were made to serve the petitioner. However, although the father of the petitioner, who is the defendant No.1 in the suit, was served, the notice could not be served upon the petitioner because he was disclosed to have left the village. Since even the parents of the petitioner had not given the address of the petitioner, therefore, *munadi* was got conducted in the area, where the property in dispute is situated. Since the

petitioner did not appear despite *munadi*, therefore, he was proceeded ex-parte vide order dated 3.12.2018. The petitioner filed application for setting aside the ex-parte proceedings, however, the same has been dismissed by the impugned order.

The counsel for the petitioner has submitted that the petitioner was not served properly. Even the *munadi* was conducted in the area where the petitioner was not residing. Hence, the trial Court has wrongly rejected the application filed by the petitioner.

Having heard the counsel for the petitioner, this Court does not find any substance in the argument raised by counsel for the petitioner. As per the record, the father of the petitioner was served at the address mentioned in the plaint. The summons were sent at the same address qua the petitioner as well. However, the same were not received, rather it was disclosed by the family of the petitioner that he had left the village. But no further address of the petitioner was ever disclosed so as to send the notices at the place where the petitioner was residing. Since the plaintiff could not get any other address, therefore, he applied for effecting service through *munadi*, at the place where the property is situated. Having been allowed by the Court, *munadi* was conducted. It is only thereafter that the petitioner was proceeded ex-parte. No fault could be found with the process adopted by the Court. The Court was required to conduct *munadi* at the place where the property in dispute is situated. That step has already been taken by the Court.

Moreover, the Court below has recorded that no claim has been made against the petitioner, who is defendant No.2 in the suit. Even during the hearing of the present petition, the counsel for the petitioner has failed to point

out as to how he will be prejudiced by the order of proceeding ex-parte qua his any interest in any property. Therefore, otherwise also, there is no justified basis for interfering with the order passed by the Court below. A perusal of the impugned order also shows that the entire evidence has already been led by the respective parties. The case is at the stage of arguments. By allowing the application of the petitioner, the case would have to be taken to the preliminary stage. However, such an exercise cannot be permitted to be carried out at the instance of a person against whom even any claim is not made by the plaintiff of the suit.

In view of the above, finding no merit in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

2.2.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No