

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

**CR-789-2019 (O&M)**

Date of decision: 30.11.2022

Iqbal Singh

....Petitioner

Versus

Balwant Kaur and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr.Rahul Sharma, Advocate for the petitioner

**ANIL KSHETARPAL, J (Oral)**

1. The petitioner's suit for grant of decree of specific performance of the agreement to sell dated 18th August, 1988 has been dismissed for non prosecution, on account of the fact that he has failed to furnish the correct address of defendant No. 1, 2 and 6. An application seeking review of the order dismissing the suit for non prosecution has also been dismissed by the trial court.

2. The relevant facts, in brief, are required to be noticed.

3. The plaintiff while claiming the agreement to sell in his favour filed the suit. The suit is with respect to the Industrial plot No. 182/57, Industrial Area, Phase 1, Chandigarh, measuring 528.125 square yards. At the time of execution of the agreement to sell, the entire sale consideration is stated to have been paid on the delivery of possession.

4. The suit was filed in the year 2017. Defendant No.6-Saroop Singh was allotted the plot in question. He executed an attorney in favour of defendant No. 1 and 2 but subsequently gave attorney in favour of defendant No. 3, 4 and 5. In the suit, defendant. No. 3, 4 and

5 were served but they did not enter appearance and they were proceeded against ex-parte. The petitioner's application under Order V Rule 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') to serve defendant No. 1, 2 and 6 by substituted service has been dismissed by the trial court. The court has held that the suit has been filed after a period of 19 years and he has failed to furnish the correct address of defendant No. 1 to 6 despite the repeated opportunities being given to them.

5. Order V Rule 20 CPC permits the court to complete the service of notice through publication, if the court is satisfied that there is a sufficient reason to believe that the defendant is avoiding the service of summons, and or for some other reason, the summons cannot be served in the ordinary way. The trial court has concluded that there is no sufficient reason to believe that the unserved defendants are avoiding to receive the summons sent by the Court. However, the court has overlooked the second part of the Order V Rule 20 CPC, which enables the court to order substituted service for any other reason if the summons cannot be served in the ordinary way. The plaintiff filed an affidavit to the effect that despite his best efforts he was not able to find out the address of the defendant No. 1,2 and 6. In these circumstances, the trial court has erred in dismissing the said suit. The plaintiff filed the suit after paying the ad valorem Court fee. Defendant No. 3 to 5 despite service did not enter appearance. In such circumstances, particularly when the agreement to sell between the parties was executed approximately 19 years before filing of the suit, the court should have

taken a pragmatic view of the matter. Hence, the orders dated 21st December 2017 as well as 24th September, 2018 are set aside. The application under Order V Rule 20 CPC is allowed. Let defendant No. 1 to 6 be served through the publication in the newspaper “The Tribune” on the deposit of the necessary charges. The trial court is requested to fix a date of hearing, for which the said notice will be published. The suit filed by the plaintiff shall stand restored as to its original number. The petitioner through his learned counsel is directed to appear before the trial court on 19.12.2022.

6. The revision petition stands allowed.

7. All the pending miscellaneous applications, if any, are also disposed of.

30.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)**  
**JUDGE**