

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

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**CR-601-2022
Date of Order: 23.02.2022**

RAVINDER PARKASH AND OTHERS

..Petitioners

Versus

RAJINDER KAUR AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jhanji, Sr. Advocate
with Ms. Eliza Gupta, Advocate
for the petitioners.

ANIL KSHETARPAL, J(Oral)

The petitioners are the plaintiffs in a suit for grant of decree of declaration that a previous judgment and decree dated 31.05.2014, passed in **“Rajinder Kaur and others Vs. Mohan Indra Singh and others”** is null and void. The trial Court, for the reasons stated in the order, has set aside the ex parte judgment and decree dated 30.10.2017, while permitting the defendants (respondents herein) to contest the suit on merits.

The defendants were proceeded against ex parte on the basis of a presumption that a notice sent through registered post must and ought to have been delivered to the addressee. When the application for setting aside the decree was filed, it was shown that two contradictory reports from the post office Gopalpur (Kangra) have been sent. The Court observed that such contradictory communications raised a doubt in the mind of the Court regarding the proper service of notice on the defendants.

Thus, the Court set aside the ex parte decree.

Heard the learned Senior Counsel assisted by Ms. Eliza Gupta, Advocate, representing the plaintiffs. He submits that the application for setting aside the ex parte decree was filed only by defendant No.2 (Smt.

Nalini Kumari) and she appeared in evidence through her attorney and therefore, she failed to prove her case. While elaborating, he contends that the facts were in exclusive knowledge of Smt. Nalini Kumari and since she has not appeared in evidence, therefore, an adverse inference should have been drawn against her.

In the present case, the defendant has prayed for setting aside the ex parte decree. At this stage, it is only required to prove that she was wrongly proceeded ex parte.

The Court, on examination of record, has found that there is no evidence of the service of notice to the respondents from the Court. The Court has also observed that there are conflicting reports from the post office Gopalpur (Kangra) with respect to service of notice. There is also a dispute with regard to the correctness of the address given in the plaint.

The trial Court, in the exercise of its discretionary power, has permitted the defendants to contest the suit on merits. While exercising the jurisdiction under Article 227 of the Constitution of India, this Court does not find it appropriate to interfere in the aforesaid order particularly when in the suit, the plaintiffs pray for declaring a previous judgment and decree passed by the competent Court to be illegal, null and void.

With these observations, the present petition is disposed of.

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

February 23rd, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No