

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

111

CR-1164-2020 (O&M)
Date of decision: 20.05.2022

Savitri

.....Petitioner

Versus

Manmati

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Manoj Kaushik, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

The instant revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 18.04.2019 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.), Gurugram and the judgment dated 05.02.2020 (Annexure P-5) passed by the learned Additional District Judge, Gurugram vide which an application filed by the petitioner for setting aside the ex-parte order was dismissed.

Learned counsel for the petitioner submits that the respondent had procured a fake report of refusal on the summons in collusion with the process server, and the signatures appearing on the report were not of her husband. He further submits that in fact the petitioner was never served in the suit in question because at the relevant time when the summons were stated to have been served, the petitioner was recovering from an operation and was on bed rest. He further submits that the petitioner is an illiterate lady and a big fraud

had been played upon her. Therefore, in the absence of any valid service of summons, due opportunity of hearing was not afforded to her. However, as soon as the petitioner learnt about the ex-parte judgment and decree dated 12.09.2014 passed by the trial Court, she moved an application under Order 9 Rule 13 read with Section 151 CPC for setting aside of both the ex-parte order dated 06.08.2013 and the impugned judgment and decree, which were erroneously dismissed by the Courts below.

Learned counsel for the respondent while vehemently opposing the submissions made by the counsel opposite, submits that the petitioner was fully aware about the pendency of the suit in question, which is evident from the report of the process server. He further submits that the husband of the respondent in his reply against the complaint dated 28.07.2012 filed by the petitioner had also mentioned about the pendency of the suit, hence, the submissions made by learned counsel for the petitioner that she did not have any knowledge about pendency of the suit in question deserved to be rejected.

I have heard learned counsel for the parties and perused the material on record.

The petitioner in her application filed under Order 9 Rule 13 CPC took a categorical stand that since the summons were never served upon her and even the report of refusal had been fraudulently procured by the respondent, she had no knowledge much less inkling about the pendency of the suit in question.

The report of the process server is very relevant to the

controversy in hand. A perusal of the report reveals that the petitioner had refused to accept the summons. The process server while stepping into the witness box as PW2 duly proved his report and further deposed that when he went to the house of the petitioner for service of summons she refused to accept them, however, one Raghbir Singh, introduced himself as her husband and in his own handwriting wrote on the report that Savitri i.e. the petitioner had been operated upon and was, thus, unable to move around. It was also written on the report by said Raghbir Singh that the case be adjourned so that Savitri (the petitioner) could attend the Court after getting well and then file her reply, through her counsel. Thereafter, said Raghbir Singh had affixed his signatures on the summons.

The plea taken by the petitioner was that the report was fabricated and a result of fraud. The onus was, thus, on the petitioner to prove her allegations of fraud beyond reasonable doubt. The petitioner while stepping into the witness box denied that the report bore the signatures of her husband or he had written anything on the report. However, the best witness to support her case of fraud would have been her husband, Raghbir Singh but strangely, she did not even examine him to substantiate her plea of alleged fraud. In fact Raghbir Singh would have also been the best witness to deny his handwriting and signatures on the report. Except for her bald assertions, the petitioner failed to lead any convincing much less cogent evidence in support of her plea of fraud.

The case of the petitioner stands further demolished from the fact that subsequent to the suit in question, the petitioner filed an

application on 28.07.2012 to the police against the respondent and her husband. The respondent and her husband were summoned by ACP Pataudi, The husband of the respondent while filing his reply to the aforesaid application along with other documents made a mention about the institution of the civil suit in question against the petitioner. In the circumstances, the submission of the petitioner that she was unaware about the pendency of the suit in question deserves to be rejected.

In the facts and circumstances as enumerated hereinabove, this Court is not inclined to invoke its revisional jurisdiction to set aside the concurrent findings arrived at by both the Courts below.

Dismissed.

20.05.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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