

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.929 of 2022

Reserved on : 19.12.2022

Date of Decision : 23.12.2022

Roshni Devi

....Petitioner

VERSUS

Devi Lal

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jhanji, Sr. Advocate with
Mr. Munish Kumar Garg, Advocate and
Ms. Eliza Gupta, Advocate for the petitioner.

Mr. Sushil Jain, Advocate for the respondent.

ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 26.11.2014 passed by the Civil Judge (Sr. Division), Jind in Civil Suit No.2347 of 2013 whereby the defendant-petitioner was proceeded against *ex parte*; final order dated 16.05.2019 passed by the Civil Judge (Sr. Division), Jind whereby the application filed by defendant-petitioner under Order IX Rule 13 CPC was dismissed, and the order dated 23.02.2022 passed by the Additional District Judge, Jind whereby the findings of the Trial Court were affirmed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for specific performance against the defendant-petitioner. On 26.11.2014 the defendant-petitioner was proceeded against *ex parte* in the said suit. Vide judgement and decree dated 24.07.2015 the suit of the plaintiff-respondent was decreed.

The defendant-petitioner filed an application for setting aside the *ex parte* judgment and decree dated 24.07.2015 averring that on 04.09.2015 the plaintiff-respondent claimed in the village Amarheri, in the

presence of the husband of the defendant-petitioner, that he had got the judgment and decree dated 24.07.2015 passed in his favour *qua* land measuring 3 *Bighas* 10 *Biswas Pukhta* without making payment of any amount and that he would become owner of the property free of cost by getting the sale deed registered and upon hearing this an application was filed for setting aside the *ex parte* judgment and decree dated 24.07.2015 within a period of 30 days from the date of knowledge. It was further averred that the defendant-petitioner contacted her lawyer at the Courts at Jind and thereafter came to know the details regarding the *ex parte* judgment and decree dated 24.07.2015. The *ex parte* proceedings dated 26.11.2014 and *ex parte* judgment and decree dated 24.07.2015 were challenged on the ground that summons were never served upon the defendant-petitioner for 26.11.2014 by way of *Munadi* and that a false report had been prepared. It was further averred that no copy of plaint along with affidavit of the plaintiff-respondent was attached with the summons issued on 04.10.2014 for 26.11.2014 and only *Munadi* fee was attached. It was further stated in the application that earlier also a false report had been got prepared of refusal to sign on the summons by the defendant-petitioner without getting the report attested from any neighbourer or any respectable person.

Reply was filed to the said application wherein it was averred that previously the defendant-petitioner was summoned through process server for 19.02.2014 and the summons and copy of plaint was duly received by the defendant-petitioner after marking the same with her thumb impressions in the presence of Maya Singh, *Chowkidar* of the village. It was further averred that the defendant-petitioner throughout had knowledge and that subsequent summons were also duly served.

Based on the pleadings of the parties and the evidence on the record, vide order dated 16.05.2019 the Trial Court dismissed the application. Aggrieved by the said order, an appeal was preferred by the defendant-petitioner which appeal was also dismissed vide order 23.02.2022. Hence, the present revision petition challenging the orders dated 26.11.2014, 16.05.2019 and 23.02.2022.

Learned senior counsel appearing on behalf of the defendant-petitioner would contend that the first notice that was issued to the defendant-petitioner for appearance on 19.02.2014 cannot be taken into account for proper service of the defendant-petitioner inasmuch as the summons received on 23.01.2014 referred to a date i.e. 19.02.2014. On 19.02.2014 the Court was on leave and the matter was adjourned to 28.04.2014 on which date again the Court was on leave and the case was eventually adjourned to 11.07.2014. Learned counsel would further contend that the defendant-petitioner was not aware of the date i.e. 11.07.2014 as the orders were not passed on 19.02.2014 and 28.04.2014 but on 18.02.2014 and 25.04.2014 in view of the fact that the Court was on leave. Learned senior counsel for the defendant-petitioner would rely upon the second proviso to Order IX Rule 13 CPC to contend that it is the knowledge of date of hearing which is to be seen and in the present case the defendant-petitioner had no knowledge of the date of hearing inasmuch as the Court was on leave on 19.02.2014 and 28.04.2014. It is further the contention that the subsequent summons which have been issued have been in violation of the provisions of Order V Rules 17 and 20 CPC and, hence, the *ex parte* proceedings and the order dated 26.11.2014 and the *ex parte* judgment and decree dated 24.07.2015 ought to have been set aside by the Courts below. In support of this contention, learned counsel for the defendant-petitioner has relied upon

the judgments in the cases of **M/s Neerja Realtors Pvt. Ltd. vs. Janglu (Dead) Through LR. [(2018) 2 SCC 649]**; **Smruti Pahariya vs. Sanjay Pahariya [(2009) 13 SCC 338]**; **Sushil Kumar Sabharwal vs. Gurpreet Singh & Ors. [(2002) 5 SCC 377]**; **Kishori Lal Deceased through LR Chetan vs. Shish Ram & Ors. [2018 (1) PLR 342]**; **Smt. Rajkunwar & Ors. vs. Manmohan Chind [2014 (2) CivilLJ 157]**; **P.R. Ramaswami Gounder vs. M/s Kasturi Travels & Ors. [2012 (7) RCR (Civil) 1359]**; **Jagjit Khorana vs. Raj Kumar [2006 (43) RCR (Civil) 672]**; **Jamshed Bahadur vs. Rashida Bee (Smt.) & Anr. [2009 (39) RCR (Civil) 624]**; and **M.S. Naudine Pharma vs. M/s Med Manor Organics Pvt. Ltd. [2019 (2) ALT 270]**.

Per contra learned counsel for the plaintiff-respondent has contended that the defendant-petitioner stood duly served on the first occasion i.e. 23.01.2014 for 19.02.2014. It is further the contention that the Process Server has stepped into the witness-box as RW2 and has specifically stated that Ex.R4, which was the summon received by the defendant-petitioner on 23.01.2014, was duly served upon her and that she had appended her thumb impressions on the same and the same was witnessed by Maya Singh, *Chowkidar*. Maya Singh, *Chowkidar*, who stepped into witness-box as AW3, also reiterated the version put forth by RW2, Jasbir Singh, Process Server. It is further the contention that the defendant-petitioner herself had admitted having appended her thumb impressions on the said summons. Learned counsel for the plaintiff-respondent has further contended that AW3 Maya Singh was the witness produced by the defendant-petitioner who in his cross-examination has specifically admitted that the defendant-petitioner had put her thumb impressions after receiving the summons and he thereafter signed the same. He also identified his

signatures on the summons (Ex.R4). Learned counsel for the plaintiff-respondent has relied upon the judgment in the case of **Janta Singh @ Gurjant Singh vs. Amrik Singh & Ors. [2018 (4) PLR 130]** to contend that merely because the Court was on leave would not bring the case of the defendant-petitioner within the purview of the second *proviso* to Order IX Rule 13 CPC. Learned counsel has further relied upon the judgment in the case of **Harjaswant Singh @ Jaswant Singh vs. Niranjan Singh & Ors. [2016 (2) PLR 181]** to contend that though the report *qua* the refusal of acceptance of summons has been challenged, however, the defendant-petitioner did not examine the said process server and hence the summons would be deemed to have been duly served.

I have heard learned counsel for the parties.

In the present case, admittedly, the defendant-petitioner was served on 23.01.2014 for 19.02.2014. The case of the defendant-petitioner is that since the Court was on leave on 19.02.2014 and 28.04.2014, the defendant-petitioner was not aware of the date and thereafter fresh notice was issued on 11.07.2014 after noticing that notice to defendant-petitioner could not be issued as copy of the plaint was not filed. Thereafter, yet again notice was issued on 29.08.2014. Subsequently, the defendant-petitioner was served through *Munadi* vide order dated 25.09.2014 since it was reported that though summons were received, however, she had refused to give her signatures on the same. The summons issued to the defendant-petitioner at the first instance were duly received by her on 23.01.2014. The summons (Ex.R4) reveal that it was received with the report that one copy of the summons and plaint had been delivered to Smt. Roshni Devi and it bears her left thumb impression and the service was witnessed by Maya Singh,

petitioner herself as AW3 who admitted in his cross-examination that Roshni Devi had put her thumb impressions after receiving the summons and he signed the same. The said witness also identified his signatures at point Ex.RB on the summons Ex.R4. The testimony of AW3 Maya Singh, *Chowkidar*, further stands corroborated by the testimony of RW2 Jasbir Singh, Process Server, who deposed that Roshni Devi (defendant-petitioner) had put her thumb impressions on the summons (Ex.R4) and Maya Singh, *Chowkidar*, had also put his signatures on the same. Once the defendant-petitioner stood duly served, merely because the Court was on leave on 19.02.2014 and 28.04.2014, it cannot be said that the defendant-petitioner was not aware of the pendency of the case and the date fixed therein. Much stress has been laid by learned counsel for the defendant-petitioner on the second *proviso* to Order IX Rule 13 CPC to contend that the defendant-petitioner ought to have noticed the date of hearing and only if it was shown that she had the notice of the date of hearing that the application for setting aside the *ex parte* judgment and decree would not be entertained.

A perusal of the application filed by the defendant-petitioner under Order IX Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 24.07.2015 does not even refer to the summons having been served upon the defendant-petitioner on 23.01.2014 leave aside any explanation for not having appeared and assigned any sufficient cause for her non-appearance. At the first instance, when the summons were served upon the defendant-petitioner, there was no irregularity in the service rather the evidence on the record proves that the defendant-petitioner was duly served. The defendant-petitioner has herself admitted her thumb impressions on the said summons. Learned counsel for the defendant-petitioner has been unable to give any explanation as to why no efforts were made by the

defendant-petitioner to find out the date from the Court. In fact very cleverly the factum of service of the first summons has been totally omitted from the application. Learned counsel for the defendant-petitioner has contended that the subsequent service effected on the defendant-petitioner, wherein it is stated that she had refused to append her signatures/thumb impressions, was contrary to the provisions of Order V Rule 17 CPC and further that the *Munadi* carried out was in violation of the provisions of Order V Rule 20 CPC. In the present case once the defendant-petitioner stood duly served and there is no cogent reason forthcoming for her non-appearance, it cannot be held that the defendant-petitioner was not aware of the proceedings or the date fixed in the case. The judgment relied upon by learned senior counsel for the defendant-petitioner in the case of **M/s Neerja Realtors** (*supra*) pertains to the provisions of Order V Rule 20 CPC. The said judgment would have no relevance in the present case inasmuch as the defendant-petitioner stood duly served at the first instance and there is no reason forthcoming for her non-appearance thereafter. The in the case of **Samruti Pahariya** (*supra*) pertains to the grant of divorce by mutual consent by the Court under Section 13B of the Hindu Marriage Act, 1955 where the husband had failed to turn up. The said judgment again pertains to the provisions of Order V Rule 20 CPC which in view of the fact that the defendant-petitioner stood duly served at the first instance would have no relevance. Learned senior counsel for the defendant-petitioner has further relied upon the decision in the case of **Sushil Kumar Sabharwal** (*supra*) to contend that the second *proviso* to Order IX Rule 13 CPC refers to knowledge of date of hearing and not knowledge of pendency of the suit. It is further the contention that the defendant-petitioner cannot be said to have knowledge of the date after the service of summons at the first instance in

view of the fact that the Court was on leave on two subsequent dates and hence the case of the defendant-petitioner would be squarely covered under the second *proviso* to Order IX Rule 13 CPC. In the present case, it cannot be said that the defendant-petitioner did not have knowledge of the date of hearing as the defendant-petitioner stood duly served for 19.02.2014. The application filed by the defendant-petitioner is totally bereft of any details whatsoever *qua* the service of summons on the defendant-petitioner on 23.01.2014 and any explanation as to why the defendant-petitioner did not put in appearance after being duly served. It cannot be merely presumed that the defendant-petitioner was not having knowledge of the date of hearing for the simple reason that the summons were served on the defendant-petitioner for 19.02.2014 and on 19.02.2014 and thereafter on 28.04.2014 the Court was on leave. The service on the defendant-petitioner stands duly proved by way of evidence which remains un-rebutted. The judgment relied upon in case of **Kishori Lal** (*supra*) again pertains to service by *Munadi* and would have no applicability in view of the fact that the defendant-petitioner stood duly served on 23.01.2014. The judgment in the case of **Smt. Rajkunwar** (*supra*) is also *qua* non-compliance of provisions of Order V Rules 10, 12, 15 and 17 to 19 CPC. In the present case, at the first instance, there has been no violation of the principles as enunciated in Order V CPC. The judgments relied upon by learned senior counsel for the defendant-petitioner in the cases of **P.R. Ramaswami Gounder** (*supra*), **Jagjit Korana** (*supra*), **Jamshed Bahadur** (*supra*) and **M.S. Naudine Pharma** (*supra*) would also have no applicability in view of the fact that the defendant-petitioner in the present case stood duly served at the first instance on 23.01.2014.

The defendant-petitioner, as proved by the evidence on the

record, stood duly served on 23.01.2014. As a prudent person, the

defendant-petitioner was expected to at least make enquiries with regard to the subject matter referred to in the summons and to ascertain the next date of hearing in the case. In the entire application and the revision petition there is no cogent reason forthcoming nor at the time of argument has any cogent reason been given for non-appearance of the defendant-petitioner despite being served on 23.01.2014 except for the fact that the Court remained on leave on 19.02.2014 and 28.04.2014. The same cannot be taken as sufficient ground for non-appearance of the defendant-petitioner.

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

23.12.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO