

122 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1282-2022

Decided on : 14.07.2022

Smt. Pushpa Devi

. . . Petitioner

Versus

Krishan Kumar Sharma and another

. . . Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. V.P. Sangwan, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

Petition herein, under Article 227 of the Constitution of India is against the impugned order dated 22.02.2022 passed by learned Principal Judge, Family Court, Bhiwani in CIS Case No.APP/403/2017 titled as ***“Krishan Kumar Sharma vs Pushpa Devi and another”*** whereby an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 has been allowed and order dated 04.02.2015, whereby, respondent No.1 was proceeded ex-parte and further ex-parte judgment dated 24.04.2015 has been set aside and original case file titled as ***“Smt. Pushpa Devi vs General Public and another”*** bearing Guardian and Wards Case No.108 of 2014, CIS Case No.108 of 2014 has been restored at its original number.

Contentends that the trial Court has erroneously set aside the judgment and decree dated 04.02.2015 after a lapse of almost seven years. He submits that the learned trial Court failed to appreciate that respondent No.1 had refused to accept the summons when the process server went to serve upon him. Since, there was a report of refusal, the service would be

deemed to have been effected and mere non affixation of summons as per Order V Rule 17 of the Code of Civil Procedure would be inconsequential.

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

It would be apposite to reproduce Order V Rule 17 of the Code of Civil Procedure to deal with the issue in hand :-

” Procedure when defendant refuses to accept service, or cannot be found”

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.”

Adverting to the case in hand, a perusal of the impugned order reveals that the respondent refused to accept summons as per the report of the Process Server. However, admittedly the process server did not affix the copy of summons on the outer door or some other conspicuous part of the house in which the respondent ordinarily was residing or carrying on business or personally working for gain.

Therefore, in the circumstances, it could not be said that the respondent had been duly served. The provisions of Order V Rule 17 of the

Code of Civil Procedure, which have been reproduced here-in-above, are mandatory in nature and in case of its non-compliance, it would not be a mere irregularity but an illegality.

A Court of law is duty bound to satisfy itself qua due service of summons upon the defendant, failing which, the latter would be deprived of his valuable right to defend and put forth his case. The date of hearing fixed in a suit is significant for the defendant so as to enable him to participate in the proceedings to defend the case set up by the opposite party.

As a sequel to the above, this Court does not find any illegality in the impugned order, which would warrant its interference.

Accordingly, this petition being devoid of merit is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 14, 2022
gurpreet

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