

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

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CR No.2133 of 2021 (O&M)
DATE OF DECISION : 04th MARCH, 2022

Ramesh Bajaj

.... **Petitioner**

Versus

Avtar Singh and others

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Mr. Neeraj Madaan, Advocate,
for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India for quashing of impugned order dated 25.08.2021 (Annexure P-1) passed by the Motor Accident Claims Tribunal, Ferozepur (for short, the Tribunal), whereby the application filed by the petitioner under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex-parte award dated 04.02.2016, has been dismissed.

It is submitted by the counsel for the petitioner that the Tribunal has wrongly passed the ex-parte award dated 04.02.2016. The petitioner was never served with any notice qua the pendency of the claim petition. The original owner had taken a plea that he had sold the offending vehicle to M/s K.K. Bhatha Firm, who was impleaded as respondent No.4 in the claim petition. However, the petitioner had

already retired from the partnership, which was running the said brick kiln. After the year 1999, the petitioner had no concern with the said brick kiln. The counsel has also referred to the statement made by the claimant wherein he is shown to have stated before the Tribunal that it was one Sanjeev Kumar, who was the owner of the said brick kiln. One more document relied upon by the counsel for the petitioner is the information which was obtained by the claimants under the Right to Information Act and which does not show the petitioner to be the partner in the said partnership firm running the brick kiln. Relying upon these documents, the counsel for the petitioner has submitted that the petitioner had no concern with the firm running the said brick kiln. Therefore, mere service upon the brick kiln or its employee cannot be taken as service upon the petitioner. It is also submitted by the counsel for the petitioner that even the Process Server has stated before the Tribunal that the notice was served upon one Sandeep Kumar; and that this fact shows that the petitioner was not actually served.

Having heard the counsel for the petitioner and having gone through the record, this Court does not find any substance in the argument of the counsel for the petitioner. It is not even disputed by the counsel for the petitioner that the petitioner is one of the founding partners of the brick kiln in question. The registration and licence to run the said brick kiln was obtained by the petitioner himself. Although, the petitioner claims to have retired in the year 1999, however, the person who replaced him was none other than his wife. Therefore, merely because the petitioner retires as a partner would not sever the connection of the petitioner over the property of the brick kiln from the firm as such.

The counsel has also referred to a document, which is now placed on record, wherein it is reflected that even the wife of the petitioner had retired as a partner in the year 2009. One more document, which is alleged information obtained under the RTI Act, is regarding the existence of the partnership in the year 2017. Read all these documents cumulative, it is obvious that the partnership has been undergoing transformation, at will, continuously. This method is usually adopted by the persons involved in the business through partnerships, to keep the liability shifting; so as to create confusion regarding the liabilities arising from the liabilities and status of the partnership firm. Such a change in partnership cannot have any legal effect unless the same is notified for the general public. In the present case, it is not even the case of the petitioner that any change of partnership was duly notified for the knowledge of the general public. Moreover, although the petitioner has referred to the alleged constitution of the partnership firm in 1999, in 2009 and in 2017. However, none of these dates is relevant for the purpose of determining whether the petitioner was in the partnership firm on the date of accident or on the date when the service was stated to have been effected upon the respondent-brick kiln. There is nothing on record to show as to who were the exact partners on these two dates. Therefore, the petitioner has singularly failed to show that he was not served in due course before being proceeded ex-parte.

Although, the counsel for the petitioner has referred to the statement made by the Process Server that the summons were received by one Sandeep Kumar, however, there is nothing on record to show that the said Sandeep Kumar was not the employee of the said brick kiln or that

he was not having any concern with the said brick kiln on the date when he received the summons.

In view of the above, this Court does not find any fault with the impugned order dated 25.08.2021 passed by the Tribunal; in rejecting the application moved by the petitioner for setting aside the ex-parte award dated 04.02.2016.

Dismissed.

All pending miscellaneous application is also disposed of as such.

04th MARCH, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*