

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

CR-3604-2022

Reserved on : September 27, 2022

Date of Decision: October 19, 2022

Kanwar Pal

..... Petitioner

Versus

Pritam Singh deceased through LRs and others Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Kamal Chaudhary, Advocate for the petitioner.

HARKESH MANUJA, J.

Petitioner is aggrieved against the order dated 26.05.2022 (P-3); whereby order of dismissal dated 04.05.2017 passed by learned Civil Judge Junior Division on an application filed at his instance under Order 9 Rule 13 CPC for setting aside the ex-parte judgment & decree dated 22.11.2012 has been affirmed by the Additional District Judge, Ambala.

Brief facts leading to the present revision as stated in the revision petition are that a Civil Suit No.198 of 2006 titled as Pritam Singh Vs. Kanwarpal and another was filed by respondent No.1/plaintiff for possession by way of specific performance of an agreement to sell dated 03.06.2005 which was allowed ex-parte by the learned Civil Judge (Junior Division), Ambala, vide judgment and decree dated 22.11.2012. It has been stated on behalf of the petitioner that when he received the summons in the execution of ex-parte judgment and decree, then for the first time, he came to know

about the litigation and inspected the record from where he came to know that he was proceeded ex-parte. Therefore, he moved an application for setting aside the said ex-parte judgment and decree on 22.03.2014 and subsequently, on 22.07.2015 when the counsel for petitioner inspected the case file, he came to know about non-existence of application for setting aside ex-parte judgment and decree in the Court file. However, the application filed by the petitioner under Order 9 Rule 13 CPC for setting aside the ex-parte proceedings was dismissed by the learned Civil Judge, vide order dated 04.05.2017. Appeal filed by the petitioner/ defendant before the Additional District Judge, Ambala was also dismissed vide order dated 26.05.2022. It is these orders which are passed by the Courts below, have been impugned by way of present revision petition.

Learned counsel for the petitioner contends that the petitioner is a permanent resident of Pinjore, District Panchkula; whereas the address mentioned on the summons was of Village Aliaspur, Tehsil Barara, District Ambala. He further contends that at the relevant point of time, petitioner was employed with Himachal Road Transport Corporation and due to his service condition, he generally used to visit entire Himachal Pradesh; therefore, neither he received any summons on his official address; nor at his residential address at Pinjore. He also contends that if service was effected on 22.02.2006 as stated by RW1 Process Server, then there was no question of service through 'Munadi'. He further contends that both the Courts below have given undue importance to the compromise dated 19.09.2012.

I have heard learned counsel for the petitioner and gone through the record provided to me in Court by learned counsel; but I do not find any merit in the present revision petition. The argument raised by learned counsel for the petitioner that he was never served at his address in Pinjore District Panchkula, is belied from the testimony of RW-1-Virender Kumar, Process Server, Kalka Courts, District Panchkula, who in his examination-in-chief, categorically deposed that on 18.02.2006, he went to the house of defendant-Kanwarpal to serve the summons and found him at the spot, though he received the copy of summons along with plaint, but refused to sign on the same and he submitted his report Ex.RW1/A, accordingly. With respect to service of summons through “munadi” on 10.04.2006, Ranbir Singh, Chowkidar, Village Aliaspur, who while appearing as RW2, specifically deposed that at the time of preparing report of ‘munadi’, father of the petitioner- Sh. Kulwant Singh was present on the spot and he signed the report in Urdu, which is exhibited as RW2/A. In this context it would also be relevant to take notice of the fact that it has been admitted by the petitioner during his cross-examination that address mentioned in all the modes of summons i.e. through Process Server, Munadi and Registered Post are correct.

Apart from that, it has also been admitted by him that his real brother/ nephew has been the Sarpanch of the village and he has very cordial relation with them and therefore it cannot be reasonably assumed that he would not have been informed about Munadi by them. Furthermore, being a Law Officer he is supposed to be more vigilant towards the Court proceedings.

Apart from that, the present revision petition can solely be dismissed on the ground that petitioner has not been able to explain that if a compromise dated 19.09.2012 has already been effected between the parties, which had a reference to the pendency of suit, then on what basis he could claim that he was not aware about the proceedings before the learned Civil Judge. Even in his cross-examination, while appearing as AW2, he duly admitted the factum of compromise (Ex.AW2/F); and stated that it was signed by his lawyer and further deposed that the same was never acted upon. Whatever has been the fate of this compromise dated 19.09.2012; but in the present circumstance, it cannot be denied that the fact of pendency of suit was very well within the knowledge of the petitioner and he deliberately tried to avoid the proceedings.

There is no doubt that an effort has to be made that *lis* be decided by giving opportunity to both sides to represent their respective case on merits; rather than curtailing their rights based on procedural technicalities. However, it is also equally important that the principle of hearing both the parties cannot be stretched to an extent so as to give a chance to a party who is intentionally and for malafide reasons, with a purpose of delaying the matter, is avoiding to join the proceedings despite knowledge and that too, at the cost of a litigant who is pursuing his remedy with all due diligence and thus cannot be made to suffer the agony of *de novo* trial for no fault on his part; but just to benefit someone who has no sense of importance for the Court proceedings.

Accordingly, from the evidence available on record, it has been fully proved that the summons were duly served upon the petitioner and he has failed to establish any sufficient cause for his non-appearance and, therefore, I do not find any merit in the revision petition and thus, the same is dismissed, upholding the impugned orders passed by the Courts below.

October 19, 2022
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No