

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

CR No.4274 of 2022 (O&M)

Date of decision: 23rd November, 2022

Shinda Masih

... Petitioner

Versus

Raghubir Singh & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sohrab Dhanda, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

The defendant/petitioner is impugning order (Annexure P-5) dated 20.11.2018 passed by learned Addl. Civil Judge (Sr. Division), Gurdaspur and order (Annexure P-7) dated 08.08.2022 passed by learned Addl. District Judge, Gurdaspur, vide which application under Order IX Rule 13 CPC for setting aside ex-parte judgment and decree dated 09.02.2016 was dismissed.

Learned counsel inter alia contends that the courts below, while passing the above said impugned orders, failed to appreciate that the petitioner was neither served properly nor was he aware about the pendency of the suit in question. Still further, the petitioner had led ample evidence to substantiate his case of no proper service having been effected, however, it was erroneously ignored by both the Courts below. Learned counsel has urged that the petitioner is an illiterate

person, who had been erroneously attributed the knowledge qua the pendency of the suit in question. He urged that it did not appeal to prudence that the petitioner, even though knowing that he had a good case on merits, would intentionally fail to appear and contest the suit in question. It was also contended that it is settled principle of law that no person should be condemned unheard and the suit must be decided on merits after affording due opportunity of hearing to both the parties and more so, in the case in hand, as respondent No.1 in his cross-examination categorically deposed that he would have no objection if the petitioner had contested the case.

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

It would be relevant to reproduce Order IX Rule 13 CPC to deal with the matter in issue, which reads as under:-

“ORDER IX

***APPEARANCE OF PARTIES AND CONSEQUENCE
OF NON APPEARANCE***

XXXX XXXX XXXX

13. Setting aside decree ex parte against defendant

In any case in which a decree is passed ex parte against a defendant, he may apply to the court by which the decree was passed for an Order to set it aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the

court shall make an Order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

PROVIDED that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendant also:

PROVIDED FURTHER that no court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.”

A perusal of the above reproduced provisions of law reveals that in order to succeed in his claim for setting aside of an ex-parte judgment and decree, the plaintiff would have to first satisfy the Court that he/she was not served with the summons. Further, as per the second proviso, if the Court is satisfied that the defendant had due notice of the date of hearing and had sufficient time to appear and answer the claim of the plaintiff, then an ex-parte judgment and decree should not be set aside on the ground that there had been some irregularity in the service of summons.

Adverting to the case in hand, the petitioner has prayed for setting aside of an ex-parte judgment and decree dated 09.02.2016

(Annexure P-1) on the ground that he was unaware about the pendency of the suit in question as he had never been served with the summons.

A perusal of the impugned orders reveals that the report of the process server Ex.R1 does bear the thumb impressions of the petitioner, and when the petitioner was confronted with the said fact during his cross-examination, he did not deny affixation of his thumb impressions, rather he came up with evasive replies and feigned ignorance about the same.

It would also be most pertinent to point out here that AW-2 Jind Masih, who is none other than the uncle of the petitioner, admitted that he was present with the petitioner when the process server came to effect service upon him. AW-2 Jind Masih also admitted the factum of the petitioner engaging a counsel to contest the civil suit. Therefore, when all the above facts and circumstances are seen in their entirety, the inevitable conclusion which could unhesitatingly be arrived at is that the petitioner was duly served with the summons and he was well aware about the pendency of the suit in question.

No doubt, a person should not be condemned unheard, however, at the same time a person cannot be allowed to derive benefit of his own wrongs. The respondents cannot be denied the fruits of the litigation being pursued by them diligently merely because the petitioner, for reasons best known to him, chose not to appear and contest the suit despite being duly served.

As a sequel to the above, the impugned orders do not warrant any interference by this Court and consequently, the instant revision petition stands dismissed in limine.

(MANJARI NEHRU KAUL)
JUDGE

November 23, 2022
rps

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