

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SAO-33-2022 (O&M)

Reserved on : 18.11.2022

Date of Decision : 30.11.2022

Sukhdev Kaur

....Appellant

VERSUS

Jagjit Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhinav Singla, Advocate for the appellant.

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ALKA SARIN, J.

The present appeal has been preferred against the order dated 21.01.2022 passed by the Lower Appellate Court setting aside the judgement and decree passed by the Trial Court and remitting the matter to the Trial Court.

The brief facts relevant to the present case are that the plaintiff-appellant filed a suit for possession by way of specific performance of agreement dated 30.10.2012 qua land measuring 7 kanals 11 marlas being 151/336 shares of land measuring 16 kanals 16 marlas, comprised in Khewat No.1341min, Khatoni No.2745min, Rect. No.240, Killa No.13/2/2 (4-0), 18/1 (4-16), 23 (8-0), Kittas 3, situated within the revenue estate of village Kalanwali, Tehsil and District Sirsa at the rate of Rs.12,00,000/- per acre. The defendant-respondent was stated to have received Rs.10,00,000/- as earnest money.

Notice of the suit was issued to the defendant-respondent.

However, since the defendant-respondent did not appear despite Munadi, he

was proceeded against ex-parte and the suit of the plaintiff-appellant was decreed vide ex-parte judgment and decree dated 28.03.2014. An appeal was preferred against the said ex-parte judgment and decree. The lower Appellate Court allowed the appeal vide impugned order dated 21.01.2022 and remitted the case back to be decided in accordance with law after due opportunity to the defendant-respondent to file his written statement and to lead evidence. Aggrieved by the said order the present appeal has been preferred by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant has contended that the defendant-respondent was duly served by way of Munadi and once he was duly served and chose not to appear he was rightly proceeded against ex-parte.

Heard.

This Court in the case of **Gram Panchayat of Village Kale ke Uttar Vs. Surat Singh [1994 (3) PLR 448]** held as under :

“8. From the perusal of the zimni orders, it is clear that on the first date itself when the summons were received back by the Court unserved, the trial Court ordered that it was satisfied that the defendant cannot be served in the ordinary way, and, therefore, summons be served through munadi. There was no reason for the Court to order the service by munadi, on the first date itself when summons had been received back unserved. The reason for not effecting the service have not been stated. There was no fault of the defendant. The Court on the first date itself ordered that service be effected

through munadi and by the next date report regarding service through munadi is received and the defendant was proceeded ex-parte. Chowkidar of the village stated that the had not effected the munadi or received the fee which, of course, contradicted the Process Server Ravi Kumar. On the perusal of the record, I am satisfied that proper service has not been effected on the Gram Panchayat. Court was not justified in ordering substituted service on the first date itself. An institution like Gram Panchayat in the absence of any suggestion to the effect that the defendant was trying to avoid service, ex-parte proceedings against Gram Panchayat could not have been initiated, under these circumstances. There was no proper service of the ram Panchayat. Since I have held that Gram Panchayat had not been served properly and the ex-parte proceedings initiated against it were also bad, I reverse the finding on issue No. 1 as well. The ex-parte decree passed in pursuance to the exparte proceedings is also rendered bad in law. Thus, finding on issue No. 1 is also reversed.”

Yet again in the case of **Rattan Singh Vs. Sardool Singh** [2000 (2) RCR (Civil) 238] it was held as under :

“9. In this case, the Court resorted to substituted service without exhausting the other modes of service as given in Order 5 of the Code of Civil Procedure.

Order 5 Rule 19A Civil Procedure Code was introduced by Act No.4 of 1976 with effect from 1.2.77 in the Code of Civil Procedure with a view that process server and the postman acted as check on each other. In Sunanda Chaudhuri v. Ashok Kumar Chaudhuri, 1996 AIHC 5160, a Division Bench of Gauhati High Court held that "Provisions requiring simultaneous service i.e. by regd. post and by ordinary process are mandatory. Summons returned unserved. Such service has to be supported by an affidavit. The Court "shall" examine serving officer on Oath. Use of word "shall" makes the said provision mandatory. Ex parte decree passed without service of summons in accordance with provisions of Order 5, is vitiated." In Karnail Singh v. Dina Nath, 1985(2) RLR 539 it was held by a learned Single Judge of this Court that "If the defendant refuses to sign acknowledgement of service of summons, the serving officer has to affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides. Summons must be accompanied by the copy of the plaint. Mere presentation of summons without copy cannot be considered to be due service. In case the defendant, against whom ex parte decree is passed, comes to Court praying for setting aside the ex parte decree on the ground that he was not served, onus would be in the negative form on him and his statement

on oath denying service would shift the onus on the plaintiff to dis-prove his statement." In Kesar Singh v. Tara Chand, 1971 PLR 198 a learned Single Judge of this Court held that "Order 5 Rule 2 of the Code of Civil Procedure says that every summons shall be accompanied by a copy of the plaint, or if so permitted by a concise statement. Where the defendant refuses to accept service, the summons alongwith the copy of the plaint or the concise statement, as the case may be, should be affixed on the outer door of his house. The language employed in Para 3(v) of the chapter VIII-B of the High Court Rules and Orders Volume IV makes it clear that the person concerned has to be informed of the nature and the contents of the case against him. Where it has not been established that the copy of the ejectment application was also sent alongwith the summons to the tenant and the same was affixed on the outer door of his residence, the ex parte order of ejectment passed against him has to be set aside." In this case, there had been no effort at all to serve the defendant personally with the summons alongwith copy of plaint or concise statement of the case which he was to meet. Report of the process-server made by him on the summons issued for 7.2.87 is not attested by any witness. It was highly unjust and inequitable on the part of the Court to have ordered service through munadi

acting merely on this report, which was not a report of refusal of service by the defendant, rather he was reported to have been away to Hisar. Summons should have been issued for personal service upon him for the next date. It was negating justice when service through munadi was resorted to when no effort at all had been made to approach him with the summons for personal service. Provisions of Order 5 Rule 19A of Code of Civil Procedure, which are mandatory, should have been brought into play. These were not brought into play. If these had been brought into play, no wonder, either the summons had reached him for service or the registered post had reached him for service or both had reached him for service.”

In the present case a perusal of the paper-book reveals that on the first date after notice it has been recorded that the notice issued to the defendant-respondent has been received back unserved and the Trial Court directed the summoning of the defendant-respondent through Munadi. A perusal of the order dated 02.07.2013 reproduced in the impugned order reveals that there was no satisfaction recorded by the Trial Court before ordering the service by Munadi that it was satisfied that the defendant-respondent could not be served in the ordinary way and therefore summons were being issued through Munadi. There is no reason forthcoming for the Court to have ordered service by Munadi on the first date itself after the summons were received back unserved. Learned counsel for the plaintiff-appellant has not been able to convince this Court that service by Munadi

could have been ordered without the Court being satisfied that service could not be effected on the defendant-respondent by ordinary process.

Resultantly, I do not find any merit in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

30.11.2022
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(ALKA SARIN)
JUDGE

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