

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

Civil Revision No.7081 of 2019 (O&M)
DATE OF DECISION : 01.12.2022

Manjit SinghPetitioner

versus

Baldev Singh and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. T.P.S. Tung, Advocate for the petitioner

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ALKA SARIN, J. (Oral):

CM-7174-CII-2022

This is an application for restoration of the main case which was dismissed for non-prosecution on 25.05.2022.

For the reasons stated in the application, the same is allowed and the revision petition is restored to its original number.

CR-7081-2019

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 02.07.2019 allowing an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (CPC) filed by the defendant-respondents.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for permanent injunction for restraining the

defendant-respondents from interfering in the possession of the plaintiff-petitioner or dispossessing the plaintiff-petitioner or passing any passage or encroaching upon any part or portion of the land measuring 17 kanals - 3 marlas as described in the headnote of the plaint.

The defendant-respondents appeared and filed their counter-claim and thereafter when the case was fixed for the evidence of the plaintiff-petitioner on 23.07.2014, the suit was dismissed in default. Thereafter, the plaintiff-petitioner filed an application for restoration on 27.08.2014 after the period of limitation had expired. On 03.12.2014, notice was issued to the respondents for 06.02.2015. On 06.02.2015, it was noticed in the order that summons issued to the defendant-respondents had been received back with the report that the address of the defendant-respondent was incorrect. The plaintiff-petitioner was directed to file correct address within a period of seven days and the defendant-respondent was summoned for 27.04.2015. On 27.04.2015 the following order was passed :

“As reported by Ahlmad, summons issued to respondent not issued as applicant has not furnish (sic) the correct address. I found it proper that the service of respondent through ordinary process cannot be effected. So, he be summoned through publication in the daily newspaper ‘Chardi Kalan’. Applicant is directed to deposit the publication fee within 7 days for 25.5.2015. Subject to last opportunity. No further opportunity shall be granted.”

Since after the publication none had appeared for the defendant-respondents, *ex parte* judgment and decree dated 11.07.2016 was passed against the defendant-respondents. The defendant-respondents thereafter are stated to have filed a civil suit against the plaintiff-petitioner herein. At that time, they learnt about the passing of the *ex parte* judgment and decree dated 11.07.2016. The defendant-respondents thereafter filed an application under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 11.07.2016. The same was contested by the plaintiff-petitioner and vide the impugned order dated 02.07.2019 the said application was allowed. Aggrieved by the said order, the present revision petition has been preferred by the plaintiff-petitioner.

Learned counsel for the plaintiff-petitioner would contend that the application has wrongly been allowed in as much as the defendant-respondents stood duly served by way of publication.

Heard.

In the present case, a perusal of the record reveals that on 06.02.2015 the plaintiff-petitioner was directed to file correct addresses of the defendant-respondents. On the next date i.e. 27.04.2015, since the correct addresses were not furnished, the Court noted that the defendant-respondent could not be served through the ordinary process and hence service by way of publication was ordered.

In the present case, the provisions of Order V CPC have not been complied with. None of the processes as enumerated under Order V

CPC were followed by the Court concerned before ordering substituted service. In fact, the plaintiff-petitioner was directed to file the correct address and he chose not to and the Court immediately ordered for substituted service by recording that the defendant-respondent could not be served by ordinary process.

Order V, Rule 20 CPC reads as under :

“20. Substituted service - (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court House, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(1-A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(2) Effect of substituted service - Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed - Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.”

Substituted service cannot be ordered except when the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way. In the present case, as is apparent from the orders passed by the Court concerned, no efforts were made to serve the defendant-respondents by way of ordinary process. Hence, there is no question of any satisfaction or reason to believe that the defendant-respondents were keeping out of the way for the purpose of avoiding service.

In view of the above, I do not find any illegality or infirmity in the impugned order. The revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.12.2022
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(ALKA SARIN)
JUDGE

NOTE:

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