

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

239

**CR No. 7166 of 2019
Date of Decision : 29.11.2022**

*Geeta Devi**..... Petitioner**versus**Gobind Singh and others**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Manoj Kaushik, Advocate, for the petitioner
Ms. Deepika, Advocate, for respondent no.1

TRIBHUVAN DAHIYA J. (ORAL):

1. This is a revision petition under Article 227 of the Constitution of India for setting aside/modifying the impugned order dated 16.8.2019 (Annexure P-1) and order dated 7.9.2016 (Annexure P-2) passed by the trial Court. By the order dated 7.9.2016, the petitioner/defendant no.4 was proceeded against *ex-parte* on failing to appear before the trial Court despite having been served through publication; by the other order dated 16.08.2019, the application filed by the petitioner/respondent no.4 under Order IX Rule 7 CPC for setting aside the *ex-parte* proceedings was dismissed.

2. Learned counsel for the petitioner contends that defendant no.4 is a resident of Alwar (Rajasthan) as is apparent from the memo of parties itself. He further submits that notice of the suit was not served upon defendant no.4 at any stage, and the publication was ordered without complying with the necessary provisions. He further contends that the newspaper *Jyoti Darpan* has no circulation in Alwar. Therefore, even after the publication, it could not be said that defendant was actually served, and there was no basis for the trial Court to proceed against him *ex parte*. Regarding stage of the trial, he submits that as of now, plaintiff's evidence is going on. Learned counsel for the respondent has

not disputed these facts.

3. A perusal of the order passed by the trial Court dated 23.02.2016 shows that service of notice on defendant No.4 was ordered to be affected through publication in the newspaper *Jyoti Darpan*. The relevant newspaper pages, placed on record as Annexure P-3, show that the vernacular newspaper is published from Gurugram and Karnal. Notice of service was published in this newspaper on 07.05.2016 in English. There is no evidence on record to show that the newspaper had circulation in Alwar, the place of residence of defendant No.4. The impugned order passed by the trial Court dated 7.9.2016, whereby he was proceeded against *ex-parte* on non-appearance despite service through publication, also does not record any such satisfaction. Therefore, it is not established on record that proper service was affected on defendant no.4, nor can it be said that he failed to adduce good cause for non-appearance before the trial Court.

4. In view of the aforesaid, the impugned orders dated 16.08.2019 and 07.09.2016, to the extent the petitioner/defendant no.4 was proceeded against *ex parte*, are set aside. The revision petition is, accordingly, allowed and defendant no.4 is allowed to join the proceedings in the pending suit before the trial Court by filing written statement within a period of three weeks from today, subject to payment Rs.15,000/- as costs to the respondents/plaintiffs by way of demand draft.

5. Since, defendant no.4 is allowed to join the proceedings at this stage, other parties will be afforded adequate opportunity to take appropriate plea(s) and/or lead evidence, as may be required.

(TRIBHUVAN DAHIYA)
JUDGE

29.11.2022

Ashwani

ASHWANI KUMAR
2022.12.07 09:27
I attest to the accuracy and
integrity of this document

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No