

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

108

**CR-8468-2018(O&M)
Date of decision: 01.12.2022**

SUSHIL KUMAR & ANR

..Petitioners

Versus

**M/S MODI SPINNING & WVG MILLS
COMPANY LTD & ORS**

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Animesh Sharma, Advocate
for the petitioners.

ANIL KSHETARPAL, J(Oral)

The petitioners (defendant No.2 and 3 in the suit) assail the correctness of orders dated 20.05.2015 and 16.08.2018. The petitioners' application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') to set aside the ex parte judgment and decree was dismissed on 20.05.2015. The first appeal filed by the petitioners has also been dismissed on 16.08.2018. It has come on record that a suit for recovery of Rs.9,77,450.30/- was ex-parte decreed on 02.03.2006. Defendant No.3 entered appearance through Sh. Rao Nisar, Advocate, who continued to appear for a period of one and a half (1 ½) year on the strength of memo of appearance, however, thereafter, he stopped appearing. It has also come on record that on the filing of the suit, notice was issued to the defendants through the normal process adopted by the Courts. Subsequently, notice was sent through registered cover with acknowledgment due but never received back served or otherwise. The Court, in the facts of the case, ordered publication of notice in *The Tribune*, a daily newspaper having wide circulation in the area. Despite that, defendant No.2 still did not enter appearance. There is no dispute about the correctness of the address of the defendants in the suit as they have been served in the execution petition on the same address.

This Bench has heard the learned counsel representing the petitioners and with his able assistance perused the paperbook.

The learned counsel representing the petitioners has, vehemently, contended that the Court, while ordering service of notice through substituted service, did not record its satisfaction as required under Order V Rule 20 of the CPC. He relies upon the judgment of the Supreme Court in **Sushil Kumar Sabharwal Vs. Gurpreet Singh and others (2002) 5 SCC 77** to support his argument.

In this case, the aforesaid judgment shall not come to the rescue of the petitioner because defendant No.3 is a partner along with the defendant No.2, entered appearance through counsel. His counsel continued to appear for a period of one and a half (1 ½) years. Moreover, once the registered notices with acknowledgment due have been sent at the correct address of the petitioners and not received back for a period of 30 days, there is a presumption of the service of notice. In the aforesaid case, the Supreme Court has laid down that in the case of report of refusal to accept the summons then, the process served is required to affix a copy of the summons and the plaint on a conspicuous part of the house of the defendant.

Order V Rule 20 of the CPC is divided in two parts. Though the first part requires the Court to record a satisfaction that the defendants are avoiding service, however, the second part provides that the Court can pass the order for any other reason after finding that the summons cannot be served in the ordinary manner.

Keeping in view the aforesaid facts, this Court is of the considered view that the petitioners have failed to make out a case for interference in the exercise of revisional jurisdiction of this Court particularly when both the Courts below have refused to set aside the ex-parte decree.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed
of.

December 01st, 2022
Ay

(ANIL KSHETARPAL)
JUDGE

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