

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

CR-6467-2012(O&M)

Date of decision:-23.2.2023

Kulwant Singh

...Petitioner

Versus

Balwant Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjiv Gupta, Advocate
for the petitioner.

Mr.Saurabh Bajaj, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Smt.Balwant Kaur had filed a civil suit against Gurmeet Singh and others; that Civil Suit bearing No.722 of 1993 filed on 16.1.1989 was decreed by the Court of Sub Judge Ist Class, Kurukshetra vide judgment and decree dated 26.9.1994. In that civil suit Kulwant Singh had been arrayed as defendant No.2 but he was proceeded against exparte.

2. Subsequently, Kulwant Singh – defendant No.2 had filed an application on 4.2.2003 seeking setting aside of the said ex-parte judgment and decree against him. Notice of that application was given to respondent/plaintiff, who had put in appearance and offered a contest. Issues on merits were framed. The parties were afforded adequate opportunities to lead their evidence in support of their respective claims.

3. Vide order dated 19.9.2009, the Court of Civil Judge

(Sr.Divn.), Kurukshetra had dismissed the application with costs, leaving the applicant/defendant Kulwant Singh aggrieved and he had filed an appeal against that order before District Judge, Kurukshetra, which was assigned to Additional District Judge, Kurukshetra, who vide judgment dated 23.7.2012 dismissed the same, in the process affirming the order passed by the Court below.

4. Still feeling dissatisfied, such applicant/defendant No.2 has knocked at the door of this Court by way of filing the present revision petition, notice of which was given to respondents, who have put in appearance through counsel.

5. I have heard learned counsel for the parties besides going through the record.

6. The applicant/defendant No.2 Kulwant Singh had sought setting aside of ex-parte order/judgment and decree against him on various grounds, which are enumerated below in brief:

(i) Neither summons had been served upon him by the Process Server nor he had received the summons through registered AD post or any other mode, with regard to the suit in question.

(ii) The applicant/defendant had not engaged any counsel to defend himself and had not executed any power of attorney in favour of any Advocate and if there is any power of attorney on the file, the same is forged and fabricated one.

(iii) No counsel had ever sent any information to the applicant/defendant regarding his requirement to put in appearance in the Court; similarly, the Court had not issued any notice to the

applicant/defendant regarding any hearing or appearance.

(iv) The applicant/defendant had filed Civil Suit No.17 of 2003 against respondent No.1 Balwant Kaur and in the said civil suit Balwant Kaur had filed written statement on 27.1.2003 disclosing decision in the suit and pendency of appeal in the High Court and it was only then the revision petitioner/defendant gained knowledge about the ex-parte judgment and decree against him.

7. All these grounds were vehemently contested by respondent/plaintiff and the trial Court of Civil Judge (Sr.Divn.), Kurukshetra dealt with the matter in a very detailed manner and while referring to the pleadings of the parties, the evidence adduced by them both oral as well as documentary and considering the other facts and circumstances came to the conclusion that no sufficient grounds were not there to set aside the ex-parte judgment and decree dated 26.9.1994. The main reasons given for arriving at such conclusion by the trial Court are as under:

(i) A petition for partition of the land was filed by the present applicant Kulwant Singh along with his brother Gurmeet Singh and others against Ronak Singh and his wife Balwant Kaur, plaintiff in the civil suit and in para No.6 of the petition, it is specifically mentioned that respondent No.1 Ronak Singh had tried to transfer the land in question in favour of his wife Balwant Kaur by dint of the Civil Court decree to cause loss to applicant since before 21.1.1988 Balwant Kaur was not a co-sharer in the land in question and both the husband and wife colluded with each other to file a

pre-emption suit against applicant Kulwant Singh of the land which they had purchased, meaning thereby that from the pleadings in the partition petition Ex.R1, it transpires that applicant Kulwant Singh was aware about pendency of the civil suit and such partition suit Ex.R1 had been proved by Sh.Sahab Singh, Advocate appearing as RW1.

- (ii) Ex.R2 is the certified copy of the written statement filed by Ronak Singh and his wife Balwant Kaur, which was duly proved by RW2 Nand Kishore, who was previously working with Sh.R.K. Saini, Advocate(since dead) and in para No.2 of the written statement, it is pleaded by Ronak Singh and Balwant Kaur, who are respondents in the partition petition that Mam Chand and Kartar Singh were owners of the land, which had been purchased by such respondents and in that regard a pre-emption suit bearing No.50/89 titled 'Balwant Kaur Versus Gurmeet Singh' was pending in the Court of the then Addl.Sr.Sub Judge, Kurukshetra with next date of hearing being 9.5.1989 and in that case Balwant Kaur was declared owner of the land, therefore a dispute between the parties was pending with regard to the land in question, as such it became abundantly clear that applicant Kulwant Singh was aware about the pendency of the civil suit bearing No.722 of 1993 filed on 16.1.1989 titled 'Smt.Balwant Kaur Versus Gurmeet Singh etc.'
- (iii) The summons issued in Civil Suit bearing No.722 of 1993 had been sent to four defendants, namely, Gurmeet Singh, Kulwant Singh sons of Gobind Singh, Mam Chand and Kartar Singh sons of

Puran Singh, residents of Koulapur with next date of hearing fixed as 23.2.1989. The Process Server had submitted his report on 21.1.1989 that none of such persons met him when he went to the spot to get their service effected, rather he came to know that such persons were away to Kurukshetra. This report was witnessed by Jai Ram, Chowkidar. When Process Server went to addresses of the defendants again on 29.1.1989, he came across one Kartar Singh one of the defendants and he handed over one copy of summons to him, whereas other defendants kept themselves concealed in order to avoid service. As such, he had affixed one copy of summons along with copy of plaint on their residential house, however that report of Process Server was not attested by any witnesses statedly for the reason that no witness was available at the spot, thereby showing that Gurmeet Singh was aware of the pendency of the civil suit and next date of hearing fixed in the said case.

(iv) Certified copy of vakalatnama Mark R1 shows that it was executed by applicant Kulwant Singh and his brother Gurmeet Singh in favour of Sh.R.K. Saini, Advocate and it was filed in the Court on 23.2.1989, the date fixed in the case. Though Sh.R.K. Saini, Advocate had expired but authenticity of the vakalatnama in his favour stood established. In that way, the defect, if any, in the report on summons Mark R2 got cured.

(v) The applicant Kulwant Singh appearing as PW1 in the Court during his cross-examination had stated that he did not remember as to whether they had filed any partition petition, though on a second

thought he stated that they had not filed any such petition but his such contention stood falsified from the record available and copy of partition petition Ex.R1 showing that the applicant along with others had filed a petition for partition before Tehsildar, Thanesar. Therefore, it comes out that applicant Kulwant Singh was aware about the pendency of the civil suit in the year of 1989 itself and story set up by him that he came to know about the suit having been filed and an ex-parte judgment and decree having been passed against him in the year 2003 from the written statement filed by Balwant Singh in the civil suit filed by him stands falsified.

(vi) With applicant having knowledge about civil suit No.722 of 1993 having been filed by Balwant Kaur against him and others, his moving application on 4.2.2003 seeking setting aside of ex-parte judgment and decree was hopelessly time barred.

(vii) The conduct of the applicant Kulwant Singh was such, which belied the case set up by him in his application seeking setting aside of ex-parte judgment and decree. With his brother Kartar Singh having been served, it is highly unlikely that the applicant residing in that very house may be in a different portion and even if residing in neighbouring house, would not have come to know about pendency of the suit. Under the circumstances, some irregularity in service of summons does not help the applicant since in terms of second proviso to Order 9 Rule 13 CPC, 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 sufficient time to appear and answer the plaintiff's claim.

8. When the matter went to learned Additional District Judge, Kurukshetra, he found himself in agreement with the Court below and had dismissed the appeal.

9. Here learned counsel for the revision petitioner has almost repeated the pleas taken before the trial Court as well as First Appellate Court but those have been dealt in a very proper and appropriate manner by the Courts below, in the process, rejecting the claim of the applicant Kulwant Singh and I do not find myself in disagreement with the Courts below in that regard. Learned counsel for the revision petitioner while praying for acceptance of the revision petition has pointed out to the following factors:

- (i) that a joint summons had been issued in the name of four defendants without attaching copy of the plaint, which is in violation of the law;
- (ii) the report of Process Server with regard to the applicant/defendant having concealed himself to avoid service being not attested by any witness;
- (iii) the Courts below having wrongly come to the conclusion that applicant/revision petitioner had executed a vakalatnama in favour of Sh.R.K. Saini, Advocate;
- (iv) the trial Court not making any effort to secure personal service of applicant/defendant;

(v) the trial Court having not recorded any satisfaction that personal service of applicant-revision petitioner was not possible before ordering his service in a substituted manner;

(vi) the Process Server, who had submitted the report with regard to applicant revision petitioner having concealed himself to avoid service not examined by respondent/plaintiff Balwant Kaur during her evidence.

10. Learned counsel for the revision petitioner has contended that gross illegalities have been committed in service of applicant/revision petitioner and he was wrongly declared ex-parte, therefore the order vide which the applicant revision petitioner was proceeded against ex-parte and ultimately ex-parte decree was passed against him are not sustainable. Therefore, the revision petition be allowed. In support of his contentions, learned counsel for the revision petitioner has referred to judgments *Malkiat Singh Versus Joginder Singh, 1998(1) RCR(Civil)277, Sushil Kumar Sabharwal Versus Gurpreet Singh, 2002(3) RCR(Civil)431, Ajit Singh Versus Santokh Singh, 2002(4) RCR(Civil)13, Baldev Singh Versus Labh Singh, 2003(3) RCR(Civil)592, Mohd.Bashir Versus Maqsood and others, 2006(3) RCR(Civil)781, Bank of India Versus M/s Mehta Brothers & Ors., 2009(1) CiviLJ 382, Tahil Ram Versus Ramchand, 1993(2) RCR(Criminal) 617 and Scheduled Castes Co-op. Society Versus State of Punjab and another, 2005(1) RCR(Civil) 92.*

11. On the other hand, learned counsel for the respondents has vehemently contested such assertions put forward by learned counsel for the revision petitioner contending that since it is established on record that

the revision petitioner was aware of pendency of the civil suit and he was deliberately avoiding personal service and further he had executed a vakalatnama in favour of a counsel, who had put in appearance on his behalf, therefore his application for setting aside ex-parte order/judgment and decree, which was hopelessly time barred and without merit was rightly dismissed by the trial Court and that order was correctly affirmed by the Appellate Court and revision petition being without merit be dismissed.

12. After hearing the rival contentions, I find that the revision petition lacks merit and is doomed for failure. The trial Court by in depth and minute analysis of the pleadings of the parties, evidence brought on record by them and considering other facts and circumstances including settled legal position on the subject found the application filed by revision petitioner for setting aside of ex-parte order/judgment and decree to be without merit and rejected it. The Appellate Authority had also passed a detailed order agreeing with the order passed by the trial Court.

13. It has been found that the revision petitioner was aware of the pendency of the civil suit filed by Balwant Kaur against him and others and he had engaged a counsel to represent him, who had put in appearance, who had subsequently absented and then the applicant was rightly proceeded against ex-parte and thereafter ex-parte judgment and decree were passed against him. It being so, some irregularities in issuance of summons and reports made by the Process Server as well as procedure adopted by the Process Server for service of applicant/defendant pale into insignificance in view of second proviso to Order 9 Rule 13 CPC. Under

the circumstances the revision petitioner cannot be allowed to highlight some alleged irregularities in the procedure so as to set the clock back and has a *de novo* trial when it is established on the record that he having notice of the pendency of the suit had intentionally absented from the proceedings. The judgments referred to by learned counsel for the revision petitioner do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

14. The impugned orders passed by the Courts below are quite detailed and well reasoned and those do not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned orders by way of exercising the revisional jurisdiction.

15. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 2.11.2015 passed by this Court directing that execution proceedings shall remain stayed in the meanwhile thus comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

23.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No