

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(121)

CR-736-2023(O&M)

Date of Decision : 19.04.2023

Jasbir Singh

...Petitioner

Versus

Amar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Arya, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

CM-2193-CII-2023

Application is allowed, as prayed for.

CR-736-2023

The present civil revision petition has been filed for setting-aside the order dated 18.10.2021 (Annexure P-2) passed by the learned Civil Judge (Jr. Divn.), Gurdaspur by which the application filed by the petitioner under Order 9 Rule 13 CPC for setting-aside the ex-parte judgment dated 15.03.2017, has been dismissed as well as to the order passed by the lower appellate court dated 12.01.2023 by which the appeal preferred against the said order dated 18.10.2021 has also been dismissed.

Learned counsel for the petitioner argues that without appreciating the actual fact that the parties should be allowed to contest the suit and the dispute between them should be decided on merit, the

application filed by the petitioner under Order 9 Rule 13 CPC for setting-aside the ex-parte judgment and decree dated 15.03.2017 should have been allowed, whereas the said application has been dismissed hence, the impugned order dated 18.10.2021 (Annexure P-2) as well as order dated 12.01.2023 are liable to be set-aside and the ex-parte judgment and decree dated 15.03.2017 may kindly be set-aside.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

It is a conceded fact that the service was effected upon the petitioner on the address given in the plaint, which is a correct address of the petitioner. It has already come on record that keeping in view the report of the process server, after going through the summons, the same were refused to be accepted by the petitioner after which, the summons were affixed outside his house. That being so, in the present case, it cannot be said that there was no valid service upon the petitioner before he was proceeded ex-parte.

Once a person chooses not to exercise his right to defend himself in a litigation, no grievance can be raised subsequently by the said person that his point of view has not been brought on record before passing appropriate order.

The argument of the learned counsel for the petitioner that the dispute between the parties should be settled after noticing the defence/claim of both the parties, it may be noticed that for the said purpose, notice was issued to the petitioner. It is the petitioner, who failed to join the proceedings despite a valid notice. Once, the petitioner decided not to bring

on record his side of defence to the claim raised, subsequent to the order passed by the competent court of law, he cannot agitate that his point of view has not been brought on record and he has been condemned unheard. The Court is required to see the conduct of the party even while deciding an application under Order 9 Rule 13 CPC. In the present case, once it has already come on record that the petitioner refused the service and the summons were affixed on the premises, where the petitioner was residing, it cannot be said that the impugned orders suffers from any perversity or illegality.

No ground is made out for interference by this Court in the present civil revision petition.

Dismissed.

April 19, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No