

CR-878-2023

Date of Decision : 08.02.2023

Ravinder Kumar Challana

...Petitioner

versus

Neelam Bansal

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Priyanshu Kamra, Advocate for the petitioner.

B.S. Walia, J. (Oral)

1. Prayer in the instant petition under Article 227 of the Constitution of India, is for setting aside order, Annexure P/3 dated 19.12.2022, issuing conditional warrants of arrest on account of the same being based on facts not borne out from the record.

2. Learned counsel contends that vide order Annexure P/3 dated 19.12.2022, it was recorded that notice issued under Order 21 Rule 37, CPC to the petitioner-JD had been received back duly served through his servant but he had not come forward, therefore, conditional warrants were issued against the petitioner-JD for 10.03.2023.

3. Learned Counsel contends that the impugned order is legally unsustainable on account of the explanation to Order 5 Rule 15 CPC, as per which, a servant is not a member of the family within the meaning of Rule 15. Order 5 Rule 15 of CPC is reproduced as under:-

15. Where service may be on an adult member of defendant's family.-

Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of

his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation: A Servant is not a member of his family within the meaning of this rule.

4. A perusal thereof reveals that where in any suit, a defendant is absent from his residence at the time when the service of summons was sought to be effected on him and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service is to be made on any adult member of the family, whether male or female, who is residing with him, but as per the explanation to the said Rule, a servant is not a member of his family within the meaning of Rule 15. Learned counsel contends that service report Annexure P/4 also reveals that the petitioner was not present at the time when service was sought to be effected on him despite number of visits and it is also evident from the service report that the petitioner had gone outside for some days for some personal work, therefore, service of summons could not be deemed to have been effected on him. Learned Counsel contends that the witness to the service report is one Arvind, who is servant of the petitioner and that in the circumstances, issuance of conditional warrants of arrest for 10.03.2023, is wholly illegal. Learned Counsel further on instructions from the petitioner states that the petitioner would put in appearance before the learned Civil Judge, Junior Division, Abohar, on the date fixed i.e. 10.03.2023.

5. I have considered the submissions of learned counsel.
6. Admittedly, as per the provisions of Order 5 Rule 15 CPC, in the absence of presence of defendant, service can be effected on an adult member of the family but not on a servant as is evident from the explanation to Order 5 Rule 5 CPC.
7. In the light of the position noted above, order Annexure P/3 is legally unsustainable. Taking into account the statement of learned counsel for the petitioner on instructions from the petitioner that he would appear before the learned Civil Judge, Junior Division, Abohar, on the date fixed i.e. 10.03.2023, I am of the view that no useful purpose would be served by issuing notice to the respondent as the same would merely delay the proceedings besides result in unnecessary incurring of expenditure on account of the respondent having to engage a counsel. Accordingly, in the circumstances, without issuing notice, I deem it appropriate to set aside order Annexure P/3 dated 19.12.2022, to the extent it orders issuance of conditional warrants of arrest of the petitioner-JD but direct the petitioner to be present before the learned Civil Judge, Junior Division, Abohar on 10.03.2023, failing which, the learned Civil Judge, Junior Division, Abohar, shall take out appropriate proceedings against the petitioner, in accordance with law.
8. Petition allowed as above.

(B.S. Walia)
Judge

08.02.2023

rajesh

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