

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 5674 of 2019 (O&M)****Date of Decision: 12.09.2023**

Harjinder Singh

... Petitioner(s)

Versus

Balwinder Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Ramesh Chand Sharma, Advocate
for the petitioner(s).Mr. A.S.Khinda, Advocate
for the respondent No.1.**Anil Kshetarpal, J.**

1. The petitioner before this Court has filed a suit for possession by way of specific performance of the agreement to sell. In that suit, both the defendants were proceeded against *ex parte*. Thereafter, an *ex parte* judgment was passed on 15.02.2010. An application filed by the respondent No.1 to set aside the *ex parte* decree was dismissed by the Court of first instance on 29.09.2016. However, in appeal, the order was set aside with the following observations:-

“14. So far as the argument raised by the Ld. Counsel for the respondent that proper and valid service has been effected, is concerned, he has referred to statements of the respondent as well as of the Process Server and referred their reports on the file. The process server who got effected the service of the appellant has stated that he cannot said that lady who met him

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on 07.08.2010 was the wife of Balwinder Singh. This factum has never been got verified from anybody.

15. Another argument of the Ld. Counsel for the respondent that they have earlier filed objection Ex.R1 on 04.09.2010 which is signed by Baljinder Kaur through counsel Sh. JJS Arora, but the application for setting aside exparte judgment and decree is filed on 22.11.2010 by taking the plea that the date of knowledge with regard to the exparte judgment and decree is 24.09.2010. It is settled proposition of law that a person should not suffer from the technicalities, but a person must got a chance to contest the suit. It also reveals that legal notice Ex.P6 was issued to Balwinder Singh and his mother Mohinder Kaur through registered AD on 29.05.2008 by the present respondent and the report has been received on Ex.P12 that the addressee is residing in abroad. Suit has been filed thereafter i.e. on 24.04.2009 which amounts that the present respondent has got the knowledge that respondent Balwinder Singh is residing abroad and even at the time of filing of the suit, but he has mentioned the address of the respondent of India. But no service was effected at the address of that respondent in foreign country and even newspaper in which the notice was got published, never ordered to be sent to the present appellant. Keeping in view the law referred by the Ld. Counsel for the appellant and natural justice, this appeal succeeds and the same stands accepted and disposed of, with

no order as to costs. The respondent can be compensated with terms of costs. Impugned order dated 29.09.2016 passed by the lower court is ordered to be set aside subject to costs of Rs.50,000/-, out of which Rs.25,000/- will be deposited in the Free Legal Aid Service and Rs.25,000/- will be paid to the opposite party. Anything said in this Judgment shall not affect the merits of main suit in any manner. Lower court record, alongwith copy of this judgment be sent back. Appeal file be consigned.”

2. The correctness of the aforesaid order is assailed in this revision petition. The learned counsel representing the petitioner contends that the respondent was served through publication of the court notice in the newspaper, namely “The Tribune” and his application for setting aside the *ex parte* judgment and decree was filed through attorney.

4. This Court has considered the submissions. It is evident that before filing the suit, the plaintiff sent a notice to the respondent No.1 on 29.05.2008 which was received back with the report that the addressee is residing abroad. However, still the suit was filed while disclosing the postal address of the respondent as “resident of village Miani Bhagupurian, District Kapurthala”. The court notice was stated to have been served through a lady who claimed to be the wife of the respondent No.1. However, the Process Server did not get this information verified. The Court was also not satisfied with the aforesaid service. Hence, the service of notice upon the defendant No.1 was ordered through publication in the newspaper. The Court of Ist instance has failed to note that the respondent No.1 is not residing in the

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country. In such circumstances, the First Appellate Court has come to a conclusion that there was no appropriate service as the notice was never served to the respondent No.1 who is stated to be residing in the foreign country.

5. There is no substance in the argument of the learned counsel that the publication of the court notice in The Tribune is sufficient particularly when there is no evidence that the aforesaid newspaper has circulation in the country where the respondent No.1 was residing.

6. Moreover, the First Appellate Court has, for the cogent reasons, exercised its discretion which results in granting an opportunity to contest the suit on merits.

7. Keeping in view the aforesaid facts, no ground is made out to interfere . Hence, the present revision petition is dismissed.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 12, 2023
“DK”

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