

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5851-2019 (O&M)

Date of Decision : 25.05.2023

Sunita Rani

....Petitioner

VERSUS

Davinder Kumar and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Swati Verma, Advocate for the petitioner.

Mr. Vaibhav Sehgal, Advocate for the respondents.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 23.07.2019 whereby the application filed by respondent No.1 herein under Order IX Rule 13 read with Section 151 CPC for setting aside the ex-parte eviction order dated 31.05.2012 has been allowed.

2. Learned counsel for the petitioner would contend that the respondent No.1 was duly served inasmuch as the service was affected through his mother. However, she refused to accept the summons and hence it would be deemed service inasmuch as respondent No.1 would be deemed to have knowledge of the case. Learned counsel for the petitioner further contends that the possession has already been taken by the landlord on 07.11.2014.

3. Per contra, learned counsel for the respondents has referred to Order V Rule 17 CPC to contend that in case the party on whom the service is sought to be made refuses to accept service, affixation of copy of a summons has to be made on the outer door or any conspicuous part of the house and in the present case there was no such report of the Bailiff.

4. Heard.

5. In the present case learned counsel for the petitioners has contended that the service of summons would be deemed to be effected in view of the fact that the mother had knowledge of pendency of the case.

6. Order V Rule 17 CPC reads as under :

“17. Procedure when defendant refuses to accept service, or cannot be found.- Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, who is absent from his residence at the time when service 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 there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily

resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and 'whose presence the copy was affixed.'"

7. The report of the bailiff, which has been appended with the petition as Annexure P/5, reveals that there is no report of affixation and it simply states that mother of respondent No.1 has refused to accept the notice and stated that the notice would be accepted by him. In view of the fact that there was no compliance of Order V Rule 17 CPC, the service cannot be deemed to be effective one.

8. In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

May 25, 2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO