

CR-6125-2023
Date of decision: 13.10.2023

Harmail Singh @ HarmelPetitioner

Versus

Pawan Kumar and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Prashant Vashisth, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Article 227 of the Constitution of India seeking quashing of impugned order dated 17.07.2023 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Ludhiana, vide which the application under Order 9 Rule 13 Code of Civil Procedure filed by the petitioner for setting aside the *ex parte* order dated 17.11.2014 was dismissed.

Learned counsel for the petitioner *inter alia* contends that the petitioner was not duly served. The service was made through his daughter-in-law and there was no endorsement of the time and manner of service as per provisions under Order 5 Rule 17 of CPC.

Admittedly, counsel who has represented the petitioner before the learned trial Court has merely filed his memorandum of appearance. On the next date, he has pleaded no instructions. As such, the learned trial Court was required to issue fresh notice to the petitioner.

Heard.

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This Court *prima facie* finds force in the arguments of learned counsel for the petitioner. The learned trial Court has not specifically dealt with the issue with regard to the mode and manner of service, especially, when the learned counsel for the petitioner pleaded no instructions and no notice was served upon the petitioner. No other mode of substitute service was exhausted.

Keeping in view the prayer made in the present petition, this Court is inclined to allow the present revision petition. The impugned order dated 17.07.2023 is set aside subject to payment of Rs.10,000/- as cost(s) payable to the respondent. The learned trial Court is directed to grant proper opportunity to the petitioner to file written statement and lead his evidence.

Disposed of.

(HARPREET SINGH BRAR)
JUDGE

13.10.2023

Neha

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