

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

108

2023:PHHC:099962

**SAO-73-2017 (O&M)
Date of decision: 03.08.2023**

SUKHDEV SINGH

..Petitioner

Versus

AMARJIT SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Bhateja, Advocate
for the appellant.

Mr. S.S. Sidhu, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. Through this appeal, the plaintiff (petitioner herein) assails the correctness of order passed by the First Appellate Court while allowing first appeal against dismissal of application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to the 'CPC') by the trial Court.

2. Originally, the plaintiff's suit for possession by way of specific performance of the agreement to sell was ex parte decreed on 02.04.2008. The defendants through their power of attorney Sh. Zora Singh filed an application under Order IX Rule 13 of CPC on 18.07.2009 with a prayer to set aside the ex parte judgment and decree dated 02.04.2008. The application was dismissed by the trial Court on 23.12.2014, which as noticed above has been set aside by the First Appellate Court vide judgment dated 17.07.2017.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. The learned counsel representing the petitioner while referring to the deposition of Sh. Zora Singh submits that the defendants as well as

their attorney had the knowledge of the proceedings of the suit, and therefore, the Court has wrongly set aside the ex parte decree. He submits that Sh. Zora Singh has admitted that he did not accept the summons though it was tendered to him. He further states that he immediately informed the defendants about the institution of the suit and has been watching the proceedings of the suit. On the basis of the aforesaid statement, the learned counsel representing the petitioner prays for acceptance of the appeal.

5. On the other hand, the learned counsel representing the respondent submits that the parties are closely related as Sh. Sukhdev Singh's sister is married to Sh. Gurmail Singh. It has been submitted that Sh. Sukhdev Singh knew about the fact that the defendant No.2 and 3 are residing in the United States of America, however, in the suit, their postal address was of village Moranwali, Tehsil and District Faridkot. He further submits that the Court's process server as well as the postman informed the Court that the defendants are not residing in the country, however, still the Court proceeded against ex parte on publication of notice in the newspaper '*Des Sewak*', which does not have circulation in the United States of America.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. It is not in dispute that in the suit for possession by way of specific performance of the agreement to sell, defendants did not implead Sh. Zora Singh, hence, Sh. Zora Singh did not receive the summons. It is also not in dispute that the process server as well as the postman in response to the notices sent by the Court, reported that the defendants are residing out

of the country. Still, the Court rather than insisting on the plaintiff to furnish the correct address of the defendants, allowed the application under Order V Rule 20 of CPC while ordering service through publication in a newspaper which does not even have a pan India circulation.

8. In such circumstances, the First Appellate Court on appreciation of evidence has drawn a plausible conclusion, which does not require interference in the appeal.

9. Hence, dismissed, accordingly.

10. All the pending miscellaneous applications, if any, are also disposed of.

August 03rd, 2023
Ay

(ANIL KSHETARPAL)
JUDGE

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