



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

**CR-1412-2023 (O&M)
Date of Decision: 12.07.2024**

RANJIT SINGH AND ANOTHER **....Petitioners**

VERSUS

MEERA SHARMA AND OTHERS **....Respondents**

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. L.S. Sidhu, Advocate
for the petitioners.

Mr. Prateek Sodhi, Advocate
for the applicant in CM-1861-CII-2024.

Mr. K.S. Brar, Advocate
for respondent Nos.1 to 4.

Mr. A.P.S. Sandhu, Advocate with
Mr. Ashish Kaushik, Advocate
for respondent Nos.54, 337 and 474.

Mr. Sahil Matharoo, Advocate with
Mr. J.S. Chahal, Advocate
for respondent No.73

HARKESH MANUJA, J. (Oral)

1. By way of present petition, challenge has been laid to an order dated 25.11.2022 passed by the Court of Additional District Judge, Amritsar, whereby an application filed under Order 41 Rule 21 CPC read with Section 5 of the Limitation Act, praying for re-hearing of the appeal upon setting aside of an *ex parte* judgment passed by the First Appellate Court on 05.02.2016, stands allowed.



2. In the present case, invoking Section 92 of the Code of Civil Procedure, the petitioners filed a suit for declaration challenging the validity of decree dated 07.02.1995 in favour of defendant Nos.1 and 2 whereby they were granted permission to alienate land measuring 254 kanal 4 marla situated in village Pandori Waraich, Tehsil and District Amritsar besides, seeking appointment of new trustees and also praying for grant of permanent injunction for restraining defendant Nos.1 and 2 from alienating the suit property.

3. In the aforementioned suit, the defendants including respondent Nos.1 to 4 (defendant Nos.42 to 45) were proceeded against *ex parte*. Later vide judgment and decree dated 12.01.2015, the suit was partly allowed in favour of petitioners while granting decree to a limited extent of directing defendant Nos.1 and 2 to render accounts regarding alienation of the land made by them. Operative portion from the judgment dated 12.01.2015 is extracted hereunder:-

“As such, the suit of the plaintiffs is preliminary decreed and preliminary decree is, hereby, passed partly only to the extent that defendants no.1 and 2 only are directed to render the accounts with regard to alienation of the suit property regarding which they have been granted permission by the court of Sh.K.C.Garg, Sub Judge 1st Class, Amritsar, so that it can be determined that property has or has not been alienated in compliance with the Judgment and decree. Preliminary Decree sheet be prepared accordingly and file be consigned to the Record Room”

4. Aggrieved thereof, the petitioners filed first appeal on 20.03.2015. In its statutory wisdom, under Order 41 Rule 3 as substituted and applicable, the First Appellate Court chose not to effect service upon respondents-defendants while proceeding them *ex parte* on account of their non-appearance before the trial Court and



finally vide judgment and decree dated 05.02.2016, allowed the appeal in part while restraining defendant Nos.1 and 2 from alienating the suit property to any third party till the enquiry of rendering accounts by the District Magistrate/District Collector, Amtrisar was pending and also appointing the District Collector, Amritsar as the Trustee.

5. Based upon the aforementioned judgment and decree dated 05.02.2016, an entry was got recorded in the jamabandi in the year 2021. As soon as respondent Nos.1 to 4 came to know about the same, application dated 09.03.2022 was filed on their behalf before the First Appellate Court invoking Order 41 Rule 21 CPC with a prayer for re-hearing of the appeal based upon their having purchased a portion of the suit land vide sale deed dated 22.02.1995.

6. In addition, another application for explaining the delay in filing of the application for re-hearing of the appeal was also presented before the First Appellate Court on 22.08.2022. However, no response to the aforementioned two applications was filed by the petitioners-plaintiffs.

7. The First Appellate Court vide order dated 25.11.2022, allowed the applications filed on behalf of respondent Nos.1 to 4 while setting aside the judgment and decree dated 05.02.2016 and posting the matter for re-hearing of the appeal. Aggrieved thereof, the present revision petition has been filed.



8. Learned counsel for the petitioners submits that once the respondents were proceeded against *ex parte* before the trial Court, there was no occasion for the First Appellate Court to get them served in the first appeal and thus, the appeal was rightly heard in their absence and as such the respondents were having no right to file any application for seeking re-hearing of the appeal. He further submits that all the respondents were residents of same vicinity and thus, were having knowledge about the pendency of litigation, therefore, the inordinate delay in filing the application for re-hearing of the appeal was not a *bona fide* act on their part. Learned counsel also points out that though the first application seeking re-hearing of the appeal was filed at the instance of respondent Nos.1 to 4 on 09.03.2022, however, no application / affidavit explaining the delay in filing the same was not presented along with it and the same was filed only after a period of more than 05 months on 22.08.2022 by way of another application, thus, the prayer made on behalf of respondent Nos.1 to 4 could not have been entertained by the First Appellate Court.

9. On the other hand, learned counsel representing respondent Nos.1 to 4 submits that hearing of the appeal in their absence by the First Appellate Court at the first instance was in violation of principles of natural justice which even affected their substantial rights in the disputed suit property. He also points out that despite they being proceeding against *ex parte* before the trial Court, an effort was required to be made by the First Appellate Court to serve



them before adjudicating upon the merits of the first appeal and as such, the impugned order warrants no interference.

10. After hearing learned counsel for the petitioners and having gone through the paper-book, I am unable to find substance in the submissions made on behalf of the petitioner.

11. Before delving upon the issue in hand, it may be necessary to reproduce Order 41 Rule 14(3) CPC along with Punjab amendments, which reads as under:-

“¹[(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.]

Punjab.- In Order XLI, in rule 14,-

(i) in sub-rule (2), insert the following proviso, namely:-

"Provided that the notice shall be served on the Advocate of the party who appeared in the subordinate Court where the matter is still pending."

[Vide Notification. No. G.S.R. 39 C.A. 5/1908/S. 12257 (w.e.f. 11-4-1975).]

(ii) after sub-rule (2), insert the following sub-rule, namely:-

"(3) it shall be in the discretion of the Appellate Court to make an order, at any stage of the appeal whether on the application of any party or on its own motion, dispensing with service of such notice on any respondent who did not appear, either at the hearing in the Court whose decree is complained of, or at any proceedings subsequent to the decree of that Court, or on the legal representatives of any such respondent:

Provided that-

(a) that Court may require notice of the appeal to be published in any newspapers or in such other manner as it may direct;

(b) no such order shall preclude any such respondent or legal representative from appearing to contest the appeal."

(iii) after sub-rule (3), insert the following sub-rules, namely:-

"(4) Where the respondent or any respondents has migrated to Pakistan and he cannot be served in the ordinary way, if the appeal has arisen out of a suit to obtain relief respecting, or compensation for wrong to immovable property, the notice shall be served on the Custodian of Evacuee Property, Punjab or Delhi, as the case may be. In all other cases, the notice shall be served on such Custodian and a copy of the notice shall be sent, by registered post, to the Secretary-General to the Pakistan Government.



(5) The provisions of sub-rule (4) shall mutatis mutandis apply to appellants, who have migrated to Pakistan and who cannot be served in the ordinary way.”

iv) after sub-rule (5), insert the following sub-rule, namely:-

“(6) Every notice of appeal to a respondent other than a respondent stated to be pro forma shall be accompanied by a copy of the memorandum of appeal or, if so permitted, by a concise statement.”

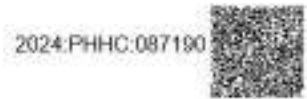
12. A bare perusal of the aforementioned provision reflects that it nowhere confers any absolute discretion upon the First Appellate Court to dispense with the service of notice of appeal on the respondents those who were *ex parte* before the trial Court and thus, needs to be applied cautiously. Reference in this regard can be made to judgment passed by this Court in *Surinder Mann and another vs. Rajesh Kumar and others*, 2009(4) Law Herald 2886, paragraph No.10 and 11 thereof, reads as under:-

“10. Thus, a perusal of the Rule reveals that in case the Appellate Court wants to dispense with the service of notice on any respondent, who did not appear, either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court then it has also been provided that the Court may require notice of the appeal to be published in any newspaper or any other such manner as it may direct.

11. Thus, the Rule does not confer an absolute power on the Appellate Court to dispense with the service upon the respondents, who were *ex parte* before the lower Court but gives an option to the Appellate Court to dispense with the service by prescribed modes provided they are put to notice through publication in newspaper or any other means as may be deemed proper by the Court. The Rule does not envisage total non service or dispense with the service completely upon the respondents. This intention could not be of the Rule as it would be violative of the very doctrine of Audi Altram Partem. It is the duty of the Court to impart justice to the parties. It is also the duty of the Court that hearing is given to the parties before is decided between them. In these circumstances, the intention of the Rule cannot be to provide absolute discretion to the Court to serve a party or not to serve. This would run contrary to the Rule of law and justice delivery system.”



13. In the given facts, admittedly no steps in terms of proviso to Order 41 Rule 14(3) CPC were taken by the First Appellate Court for publishing the notices of appeal in the newspaper before dispensing with the service of respondents and thus, the impugned order herein calls for no interference which has been passed purely in the interest of justice and for the purpose of affording opportunity of hearing to respondent Nos.1 to 4 before the First Appellate Court so as to defend themselves. The order has been passed by the First Appellate Court while having adopted the pragmatic approach rather than proceeding on the basis of hyper technicalities as it would even advance the cause of justice. The First Appellate Court while dispensing with the service of respondents herein, failed to appreciate the fact in pursuance to decree dated 07.02.1995, alienations were made on behalf of defendant Nos.1 and 2 in favour of respondent Nos.1 to 4 herein on 22.02.1995 and as such, any decree passed regarding the land in question relating to decree dated 07.02.1995 or concerning the sale consideration etc. was going to effect their substantial rights. In such circumstances, preventing respondent Nos.1 to 4 from invoking re-hearing of the appeal would result in violation of principle of natural justice and fair play and also the object and purpose of Order 41 Rule 14(3) CPC (Amended for Punjab) which can never be that any party should be condemned un-heard.



14. Accordingly, present revision petition is dismissed being devoid of merits, calling for no interference with the impugned order dated 25.11.2022, passed by the First Appellate Court.

15. Pending application(s), if any, shall also stand disposed of.

July 12, 2024

Sangeeta

(HARKESH MANUJA)

JUDGE

Whether reasoned/speaking:

Whether reportable:

Yes/No

Yes/No