

136 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1759-2024 (O&M)

Date of decision: 19.03.2024

Samarjeet Singh

....Petitioner

Versus

Samay Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep Vermani, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

1. In this revision petition, the plaintiff assails the correctness of the order setting aside the ex-parte judgment and decree while allowing the application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). In substance, the court has permitted the defendant (respondent herein) to contest the suit on merits.

2. The trial court, upon examination of the material, which is available on the file, has recorded the following findings:-

“10. Onus to prove this issue was upon the applicant. It is the case of the applicant that in the case titled as “Samarjeet Singh vs. Samay Singh” the applicant did not receive any summons and an ex-parte judgment and decree has been passed against him which is liable to the set-aside and the applicant should be given an opportunity to contest the said case. A bare persual of the main case file shows that the main case was fixed for evidence of plaintiff on 18.12.2013. On that day neither the plaintiff or the defendant appeared before the court and the case was held to be dismissed in default and file was consigned to record room after due compliance. On the same day, case file was again put up as the plaintiff

appeared before the court. The court held that the case was dismissed in default under a mistaken belief and the same was restored to its original number. The counsel for the plaintiff stated that the matter involved in the case was pertaining to Pataudi Court and the case may be transfer to Pataudi Court. On the same day, the case was referred to Ld. District and Sessions Judge for passing further order. On 12.02.2014, Ld. District and Sessions Judge declined the reference by holding that when Ld. Trial judge passed order on 18.12.2013, none was present for the defendant and reference has been made in the absence of defendant or his counsel. Thereafter, the case was adjourned for 25.02.2024 and notice to defendant was issued. Thereafter, on 30.05.2014, notice issued to defendant through counsel was received back served and the defendant was proceeded against ex-parte. It is worthwhile to be mentioned here that the defendant in that case was never served with notice. Although the notice issued against the defendant was stated to be served to his counsel Sh. Shyambir advocate. In this regard, who deposed in his examination-in-chief that he worked with Advocate Sh.Shamveer Singh for the last 19 years and he identified the signatures of Advocate Sh.Shamveer Singh very well. He further deposed that the signature over the backside of summons issued against applicant which is Ex.A12 on file is not of Sh.Shamveer, Advocate. Once the signature of Sh.Shamveer, Advocate was denied to be there on the backside of summons by his clerk, it was duty of the respondents to prove that the signature on the backside of summons was of Sh.Shanveer, Advocate. Moreover, the service upon Advocate is a substitute service and cannot be held to be direct service upon a party. Moreover, it can also not be held that at the time of receiving the notice, Sh.Shyambir, advocate was still the counsel for the defendant. The case was held to be dismissed in default and was consigned to records. Meaning thereby the fate of the case was decided by the court. In that eventuality, it was mandatory to serve with a notice to the defendant in person. Keeping in view of all facts and circumstances and discussion, this issue is decided in favour of the applicant and against the respondent.”

3. Learned counsel representing the petitioner, while referring to report on the summons sent for service of the notice, submits that the application for setting aside the decree was liable to be dismissed as the

respondent has knowledge of the pending litigation. He submits that on 14.04.2017 a report was submitted by the Station House Officer to the effect that the dispute between the parties is of civil nature and hence, they were instructed to pursue their respective civil suit in the civil court. He, hence, submits that the defendant's application, which was filed on 06.12.2017, was beyond the prescribed period of limitation. He further submits that there was no application for the condonation of delay.

4. This Court has considered the submissions made by the learned counsel representing the petitioner.

5. The plaintiff filed a suit for declaration to the effect that the sale deed executed by him on 28.11.2003, in favour of defendant, is null and void. The defendant appeared and filed his written statement on 04.12.2010. Thereafter, the suit was dismissed in default on 18.12.2013. However, it was restored on the same day. Subsequently, it was transferred from the courts at Gurugram to the courts at Pataudi. It has come on record that for one date, two summons were issued to the counsel Sh. Shamveer Singh. The report on both the summons was different. Furthermore, it is evident from perusal of the summons sent for service on the respondent that the respondent is serving in Delhi Police whereas, whenever the Process Server visited his house it was disclosed by the respondent's wife that her husband is serving in Delhi Police, however, no attempt was made by the plaintiff to serve the respondent at his office address.

6. In any case, the court has only granted an opportunity to respondent to contest the case.

7. In these circumstances, this Court does not find it appropriate to interfere.
8. Hence, dismissed.
9. All the pending miscellaneous applications, if any, are also disposed of.

19.03.2024
rekha

(ANIL KSHETARPAL)
JUDGE

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