

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3394-2021 (O&M)

Date of Decision: March 14, 2024

Satish Kumar

...Petitioner

Versus

Satinder Pal Singh Bhullar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.B.S.Sudan, Advocate
for the petitioner.

Mr.Abhilaksh Grover, Advocate
for contesting-respondents No.1 and 2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 25.10.2021 (Annexure P-11) passed by learned trial Court, whereby, an application under Order 9 Rule 7 CPC, filed by the petitioner for setting aside the ex-parte order dated 10.05.2013 (Annexure P-7) was dismissed.

The background facts, essential to be noticed, to adjudicate the matter, are as follows:-

That, initially, plaintiffs Satinder Pal Singh Bhullar and Satinder Kaur (respondents No.1 and 2 in the present case) had filed a suit against defendant No.2-Satish Kumar (present petitioner) and other defendants, thereby, seeking partition of the residential house, wherein, preliminary decree was passed by learned trial Court on 30.03.2012 and the file was

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ordered to be consigned to record. Copy of the said judgment and decree is Annexure P-1. However, after passing of the preliminary decree, an application under Order 20 Rule 18 read with Section 151 CPC, for passing of the final decree was filed by respondents No.1 and 2, copy whereof is Annexure P-2. On the said application, on 12.05.2012, notice was ordered to be issued for 04.08.2012. However, the matter was taken up on 28.07.2012 and the case was adjourned to 06.10.2012, for the same purpose. On 06.10.2012, notice was again ordered to be issued to the present petitioner (who was defendant No.2 before learned trial Court) for 01.11.2012. On 01.11.2012, summons were received back with the report of refusal, copy whereof is Annexure P-3. For appraisal, the order dated 01.11.2012 as recorded by the trial Court, is reproduced in verbatim, as herein given:-

“Sh.Pardeep Sharma, Adv. Appeared on behalf of defendant No.4 and filed POA, he is directed to file written statement for 30.11.12. Summons issued to the remaining defendants received back with the report of refusal, hence they are ordered to be summoned through Munadi and affixation on filing of Munadi fee within 7 days from today returnable for 30.11.12.”

On the next date i.e. 30.11.2012, again defendants were ordered to be served through Munadi for 11.01.2013 and thereafter, again the case was adjourned for service through Munadi. On 11.01.2013, fresh notice was ordered to be issued to the petitioner through ordinary process as well as through RC. On 16.04.2013, notice issued to petitioner-defendant No.2 was not received back served or un-served and learned trial Court had ordered for publication in the newspaper ‘Chardikala’ for 10.05.2013. On

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10.05.2013, the petitioner-defendant No.2, was proceeded against ex-parte.

Subsequently, when the matter was pending before learned trial Court on 19.03.2021 for service of defendant No.5, the present petitioner-defendant No.2, had filed an application under Order 9 Rule 7 CPC, thereby, seeking setting aside of the ex-parte order dated 10.05.2013, copy whereof is Annexures P-8. No reply was filed to the said application. However, vide impugned order dated 25.10.2021, the application of the petitioner-defendant No.2 was dismissed.

Feeling aggrieved by the aforesaid order of dismissal of the application, the present revision petition has been filed by the petitioner-defendant No.2.

Learned counsel for the parties heard.

The grievance of the petitioner is two-fold. Firstly, that appropriate procedure was not followed, while proceeding ex-parte against him and secondly, that he was not aware of the proceedings, till 15.03.2021. However, learned trial Court had disbelieved the petitioner on both the aforesaid counts. Keeping in view the material, coming forth, the submissions made by learned counsel for the petitioner before this Court, are also bereft of merits.

In the grounds of revision, the orders passed by learned trial Court, in an application for passing of the final decree, relating to dates 12.05.2012, 28.07.2012 and then 06.10.2012, have been reproduced. Furthermore, even order dated 01.11.2012, vide which, Munadi was ordered to be effected qua the remaining defendants (including the petitioner also) has been reproduced. Furthermore, the subsequent order dated 13.02.2013,

vide which, fresh notice was ordered to be issued to defendant No.2 (petitioner) as well as defendants No.7 and 8, is Annexure P-5. Annexure P-6 is the copy of the order dated 16.04.2013, which for appraisal, is reproduced, as herein given:-

“Notice issued to defendant no.2, 7 & 8 not received back served or unserved. Perusal of the file reveals that summons to these defendants were sent several times but same were not received back served or unserved. In these circumstances, I am satisfied that service of these defendants is not possible through ordinary process. Let deft.no2, 7 & 8 be summoned through publication in newspaper Chardikala for 10.5.2013 on deposit of publication charges within 3 days.”

Vide order dated 10.05.2013, copy whereof, is Annexure P-7, the petitioner-defendant No.2 as well as defendants No.7 and 8 were proceeded against ex-parte. The order dated 10.05.2013 is reproduced, as herein given:-

“Publication issued against the def.no.2, 7 and 8 received back duly served but none has appeared on their behalf. Waited sufficiently. It is already 2.35 p.m. Accordingly def.no.2, 7 and 8 are hereby proceeded against ex-parte. Now to come up on 10.7.13 for consideration.”

Considering the grievance of the petitioner to be two-fold, as observed aforesaid, it is pertinent to mention that various attempts were made by learned trial Court to secure service of the petitioner, but however, his service was not effected. During the course of arguments, with regard to refusal on the part of the petitioner, to receive the summons, the report made by the Process Service is reproduced, at page 41 of the paperbook. This is the report made by Hukam Singh, Process Server, where, he had stated about

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Satish Kumar to have been found, at the spot i.e. H.No. 2109, Sector-15C and then, he further stated that when he showed the summons to him, he flatly refused to receive the same. Though, it is submitted that no statement of serving official was recorded by the Court, but however, it is pertinent to mention that this report was solemnly made by the Process Server and that being so, there was no further necessity, as per Order 5 Rule 19 CPC, to further examine serving official on oath. This solemn report made by the serving official, is as good as affidavit and therefore, this was sufficiently considered by learned trial Court and keeping in view the service having not been conducted, though, efforts were made, learned trial Court had rightly proceeded for effecting of the service through newspaper.

Another contention raised at the behest of the petitioners is that compliance of Order 5 Rule 20 1(a) has not been made. In this regard, it is submitted that newspaper 'Chardikala', does not have circulation, at the place of the petitioner-defendant No.2 and therefore, the compliance 1 (a) of was not made.

Order 5 Rule 20 1(A) CPC, reads as follows:-

“(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be daily newspaper circulating in the locality by which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

Furthermore, Order 5 Rule 20 sub-clause (2) states about the effect of substituted service. It reads as follows:-

“(2) Effect of substituted service-Service substituted by order of the Court shall be as effectual as if it had been made on the

defendant personally.

It is pertinent to mention that Chardikala is one of the approved newspaper, having circulation in this part of the country and its circulation, as submitted by learned counsel for the petitioner, is not limited to Patiala District. This is the vernacular newspaper, which has much circulation and therefore, on the count of newspaper not being appropriate, the submission, so made is not tenable.

Furthermore, in the application, copy whereof, is Annexure P-8, it has been categorically submitted by the petitioner that he came to know about the passing of ex-parte order dated 10.05.2013, for the first time on 15.03.2021, when he obtained certified copies of all the zimini orders passed in this case, after dismissal of RSA-2736-2013 filed by defendants No.4 and 5 against the preliminary decree. This assertion is wrongly so projected.

During the pendency of the present revision petition, after the favourable interim order was passed, the contesting respondents No.1 and 2 had filed an application i.e. CM-2149-CII-2022, for vacation of stay of the order dated 04.02.2022, in view of the facts and circumstances, mentioned therein and along with said application, they had annexed various documents, which belies the assertion made by the petitioner, as aforesaid.

Before coming to the same, it is pertinent to mention that in pursuance of the preliminary decree passed by the trial Court on 30.03.2012, it was challenged by way of filing of an appeal bearing No.7154-2012, titled as 'Ashok Kumar and another vs. Satinder Pal Singh Bhullar and others'. However, the same was dismissed. Furthermore, RSA-2736-2013 was filed titled as 'Ashok Kumar and another vs. Satinder Pal Singh Bhullar and

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others', challenging the decree dated 30.03.2012 passed by learned trial Court. This RSA was also dismissed on 13.02.2020. Review application was filed, which at the time of revision petition was pending, but however, it was again dismissed.

In the light of the orders, annexed with the civil misc. application, it is pertinent to mention that as evident from Annexure R-1, which is the order passed in RSA-2736-2013 on 13.02.2020, it was observed that CM-3202-C-2018 was filed by Satish Kumar-present petitioner-defendant No.2, thereby, making a prayer for transposing him as co-appellant, in the second appeal and the same was allowed and he was transposed as appellant No.3. On that very day, RSA filed at the instance of the co-defendants was also dismissed. Not only this, even CR-1207-2018 was filed by Satish Kumar for setting aside the order dated 04.02.2015 and order dated 16.01.2018, passed by learned trial Court, wherein, the trial Court had put the subject property in the suit for auction. The copy of the said revision petition is placed on record as Annexure R-5.

It is pertinent to mention that in the said revision petition, the petitioner has himself given the detail of the manner, in which, he had made appearance before trial Court and challenged the judgment dated 30.03.2012 and judgment dated 13.12.2012, upholding the judgment of trial Court, wherein, he had narrated about the manner, in which the litigation was pursued. It shows that the petitioner was aware of the application filed for passing of the final decree. Therein, he had stated about the application for appointment of Local Commissioner having filed by the plaintiffs-respondents, to suggest the mode of partition of the house in question i.e.

subject matter of the suit.

It is assiduously submitted that in the impugned order, learned trial Court had made reference to appointment of the Local Commissioner, having so appointed, to suggest the mode for partition, who in his report, had stated about having met Satish Kumar and his wife, when he reached the suit property and after getting copy of the order, Satish Kumar, refused to give the receipt of the said order. Though, it is submitted that Local Commissioner has no authority to effect the service of the petitioner-defendant No.2, but however, it is not so. In fact, such observation had been made by learned trial Court about the Local Commissioner having met Satish Kumar, only to reach the conclusion that it implies that Satish Kumar had knowledge of the present suit for final partition. To make assessment of the petitioner, having knowledge about the same, this recital of the report of the Local Commissioner, as such, can be taken into consideration.

Not only this, the petitioner had also moved three civil misc. applications in the aforesaid RSA, asking for the stay of auction proceedings, without disclosing earlier dismissal order. The revision petition filed at the instance of Ashok Kumar (appellant in RSA), which is CR-1632-2015 as well as CR-1207-2018, filed at the instance of Satish Kumar, were dismissed on 13.02.2020, copies whereof, are Annexures R-20 and R-21. Though, the petitioner had filed the aforesaid revision petition, while he was ex-parte before learned trial Court, this Court had observed that he had preferred to file the revision petition, without preferring to file any objection before the Executing Court. This order was passed on 13.02.2020, meaning thereby, the petitioner was having knowledge about the

proceedings before learned trial Court.

From the aforesaid seriatim of facts, it is evident that the petitioner-defendant No.2, knew about the proceedings conducted for passing of the final decree. Even, after filing of the revision petition and dismissal of the same, as per observations made by this Court, still silence was maintained, at the behest of the petitioner. It was only after the gap of about eight years, since he was proceeded against ex-parte on 10.05.2013, he had filed an application for setting aside of the ex-parte order, which seemingly was moved, only to try is luck to obstruct the proceedings, on the basis of the final decree.

Also, it should be noted that at no stage, while pursuing the litigation before this Court, the petitioner had disclosed about the attempts made by him to halt the proceedings. In the application for seeking setting aside of the ex-parte order dated 10.05.2013, there was no reference made about the litigation pursued before this Court.

Looking at the manner of pursuing the litigation before this Court, while remaining away from trial Court, in itself, reveals about malafide conduct of the petitioner. It is difficult to conclude that the petitioner was not aware of the proceedings in the application for passing of the final decree, while he had filed revision petition to challenge the auction, as ordered by the Court. If he could challenge the same and also become party to RSA, obviously, the fact of pending application for final decree is bound to be in his knowledge. If not so, even then, normal human conduct demanded him to verify about the same, at the earliest possible. However, in the case in hand, the petitioner remained silent spectator for his own reasons

to obstruct the execution of the proceedings, conducted on the basis of the decree passed by learned trial Court.

There was refusal on his part to accept the summons and only thereupon, considering the report of Process Server, learned trial Court had ordered publication and despite the same, he did not make appearance before the trial court. Rather, he had chosen to challenge the orders of the trial court, qua the auction ordered by the Court and thereupon, being unsuccessful, while taking a step further, he resorted to the setting aside of the ex-parte order.

Considering the aforesaid circumstances, as spelt out, from the record, learned trial Court has appropriately considered the circumstances and had passed the impugned order correctly, which warrants no interference, while exercising revisional jurisdiction.

Hence, the present revision petition sans merit and is hereby dismissed.

All the pending civil misc. application, if any, shall stand disposed of.

March 14, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No