



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5969-2023 (O&M)

Date of Decision: 31.07.2024

ALFRED SINGH MEJIE

.... PETITIONER

Vs.

ZAMYRAH AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Ms. Madhu Dayal, Advocate, for the petitioner.
Mr. Kunal Mulwani, Advocate, for the respondents.

DEEPAK GUPTA, J.

Janet Mejie (*respondent No.9 herein*) is defendant No.8 in Civil Suit N: 1014/2021 titled '*Zamyrah & Other vs. Balraj Singh & Others*' pending before Ld. Civil Judge (Jr. Divn.), Chandigarh, filed by the minor Plaintiffs (*respondents No.1 & 2 herein*) through their mother Smt. Geetan Preet Mejie, seeking a decree of declaration, separate possession by way of partition, rendition of accounts and permanent injunction, which has arisen out of the marital discord between said Geetan Preet Mejie and her husband Jai Arvind. Said Janet Mejie admittedly, does not reside in India and resides out of the country

2. The sole dispute in this petition is as to whether she has been properly served in the suit as per law or not, inasmuch as she has been proceeded *ex parte* by the trial Court vide an order dated 07.12.2022 (*Annexure P-2*) and the application moved by her father Alfred Singh Mejie (*petitioner herein*), who is defendant No.3 in the main case, so as to recall the order dated 07.12.2022, has been dismissed by the trial Court vide order dated 25.04.2023 (*Annexure P-1*). Both these orders dated 07.12.2022 and 25.04.2023 have been assailed by the petitioner before this Court.

3.1 It is contended by Id. counsel that petitioner is a resident of Dubai; whereas his daughter Janet Mejie is major and a US citizen, residing in USA along with her mother. It is submitted further that petitioner and his wife had divorced since 1998 and the custody of Janet Mejie was given to the mother and that she had moved to USA ever-since 1998 and is not in touch with the petitioner ever-since

then. Besides, said Janet Mejie has developmental abilities, which is an admitted fact even by respondents No.1 & 2/plaintiffs themselves. As per the knowledge of the petitioner, Janet Mejie is a special child suffering from retarded mental growth.

3.2 It is contended that despite the above said mental condition of Janet Mejie and her residential status of USA, she has not been impleaded through her mother/guardian and her address has been deliberately shown to be that of Dubai. It is contended further that it was brought to the notice of the Court by way of documentary evidence that Janet Mejie was not validly served and therefore, the plaintiffs/respondents No.1 & 2 should be directed to serve said Janet Mejie in proper manner as per requirement of CPC but still the trial Court illegally and arbitrarily dismissed the application of the petitioner by treating the summons issued by the Court for 25.04.2022 to have been validly served upon her.

3.3 Ld. counsel further contends that on 09.03.2022, application (*Annexure P5*) was moved by the plaintiffs to serve defendant No.8-Janet Mejie through electronic mode of service by WhatsApp No.(206)2639264 and the said application was duly supported with the affidavit of Smt. Geetan Preet Mejie stating therein that said WhatsApp number was of defendant No.8-Janet Mejie and that she was using it. Apart from Janet Mejie, service of one more defendant namely, Simran Roop Kanwar Mejie was also sought to be effected through electronic mode by her email and WhatsApp number. Copy of the said application was not supplied to the petitioner i.e. defendant No.3 of the suit. However, the court ordered for service of these defendants accordingly on same date i.e. 9.3.2022.

3.4 Pursuant to the order dated 09.03.2022, summons were issued for 25.04.2022 to Janet Mejie, which the plaintiffs/respondents No.1 and 2 served upon the email address of the petitioner i.e. Alfred@pinnacleuae.com and it is at this stage that petitioner became aware that an order dated 09.03.2022 had been passed. On the very next day of hearing i.e. 25.04.2022, petitioner moved an application for refusal of service on Janet Mejie and for directing for fresh service of Janet Mejie in accordance with the provisions of Order 5 Rule 9 CPC. However, Id. trial Court dismissed the said application of the petitioner on the ground that an affidavit had been furnished by the plaintiffs to the effect that Janet Mejie had been served through her mobile number. There was no mention of service of Janet Mejie through email. Accordingly, the trial Court declared Janet Mejie to be duly served and proceed *ex parte* against her.

3.5 Ld. counsel for petitioner contends further that it is only on the next date of hearing that petitioner came to know regarding the filing of the affidavit of service dated 25.04.2022 on the part of the natural guardian/mother of minor plaintiffs/respondents No.1 & 2, as copy thereof had not been supplied to the petitioner. In the affidavit, it was claimed by Smt. Geetan Preet Mejie i.e. guardian of the plaintiffs i.e. Janet Mejie had been served on WhatsApp No.(206) 2639264. Along with the affidavit, she had also annexed certified documents. On getting certified copy of those documents, , it was found that there was no screen shot of any service upon WhatsApp No.(206) 2639264. Rather, there was an email dated 16.03.2022 from Smt. Geetan Preet Mejie i.e. guardian of the plaintiffs to Christina Davidson on email address christinadavidson@kingcounty.gov, wherein he had been requested that since Janet Mejie has developmental disabilities and as he had taken care of her employment, therefore, he should pass on the summons to her. It was also mentioned in this email that Janet Mejie did not have any WhatsApp number.

3.6 Ld. counsel contends that said email was responded to the effect that King Counties was assigning it for follow up. There was also an Article about Janet Mejie stating that King Countries supported the Employment Program for persons with developmental disabilities and that Janet Mejie was a new hirer recently working in the safety and training section.

3.7. Ld. counsel contends that it is clear from the email of Smt. Geetan Preet Mejie that plaintiffs themselves admitted that there was no WhatsApp number of Janet Mejie. Not only this, petitioner got checked mobile number (206) 2639264 as was provided by Smt. Geetan Preet Mejie and as per the information obtained from Golook.com, it was found that this number is a landline number in Seattle, WA, USA and that this telephone number is of Montgomery, Cheyenne, Administrator-I, of MTD Safety and Security of Kingcountry.gov., Seattle, WA, USA.

3.8 Petitioner then moved an application dated 06.01.2023 to the Court so as to recall the order dated 07.12.2022 in view of the aforesaid circumstances and prayed to serve the Janet Mejie afresh in accordance with law. However, the application of the petitioner has been rejected by way of impugned order dated 25.04.2023.

3.9 With all the aforesaid submissions, Ld. counsel prays to set aside the impugned orders in the aforesaid circumstances and to declare that Janet Mejie had

not been served in accordance with law and further direct the trial Court to serve her in accordance with law.

4.1 Refuting the aforesaid contentions, it is argued by Id. counsel for the contesting respondents-plaintiffs that this petition has been moved only to delay the proceedings. Id. counsel has also challenged the locus standi of the petitioner to file this petition, by contending that it is only the defendant, who has been proceeded *ex parte*, who can maintain application for setting aside an *ex parte* decree and not anybody else. Id. counsel has relied upon a decision of Madras High Court rendered in ***Muthulingam Vs. Gangai Ammal, 2002(3) RCR (Civil) 821***, wherein it has been held that petition by defendant other than the one, who has been proceeded *ex parte*, is not maintainable, as it is only the affected defendant, who can move the application for setting aside the *ex parte* order.

4.2 Id. counsel contends further that on the basis of affidavit of Smt. Geetan Preet Mejie, the guardian of the plaintiffs, Id. trial Court has rightly observed that Smt. Geetan Preet Mejie has been served in accordance with law.

Prayer is made for dismissal of the petition.

5. I have considered submissions of both the sides and have appraised the record carefully.

6. It is not disputed that defendant No.8-Janet Mejie is not resident of India and rather, resides out of the country. The contention of the petitioner to the effect that Janet Mejie is a special child having developmental disabilities and is under the care and custody of her mother residing in USA, is also not disputed. The said fact becomes evident even from the email dated 16.03.2022 (*see Page N: 85 of paperbook*), which was sent by Smt. Geetan Preet Mejie i.e. the guardian/mother of the plaintiffs to Christina Davidson, wherein it is clearly mentioned that Janet Mejie has developmental disabilities and as such, plaintiffs cannot plead ignorance about the said mental status of Janet Mejie. Despite these facts, the perusal of the plaint would reveal that defendant No.8-Janet Mejie has been impleaded as such without any guardian i.e. not through her guardian/mother and rather, in her individual name. Not only this, her address provided in the plaint is that of Dubai, where petitioner is admittedly residing and not the address of Janet Mejie or her mother, who are residing in USA.

7. It is not disputed by counsel for the respondents/plaintiffs that they were not aware of the fact that Janet Mejie is in the care and custody of her mother and residing in USA since 1998. Instead of providing any address of Janet Mejie in USA or that of her mother/guardian, plaintiffs sought to serve said defendant No.8 on WhatsApp No.(206) 2639264, as is evident from the application dated 09.03.2022. It is no doubt true that under Order 5 Rule 25 of the CPC, service upon a defendant residing out of India and having no agent in India can be effected through electronic mode, but it is required to be ensured that the electronic mode adopted for serving the concerned defendant pertains to the defendant. In other words, the sole objective is to serve the defendant residing out of country, may be by whatever electronic mode permissible under law.

8. However, perusal of the summons sent to defendant No.8 for 25.04.2022 would indicate that the same has been sent on email address at Alfred@pinnacleuae.com. On the other hand, the affidavit of service dated 09.03.2022 filed by Smt. Geetan Preet Mejie, the mother/guardian of plaintiffs would indicate that she mentioned therein that Janet Mejie has been served upon WhatsApp No.(206) 2639264. In this affidavit of service, there is no reference that summons to Janet Mejie has been sent at the email address of Alfred Singh Mejie at Alfred@pinnacleuae.com. It is not disputed that said email, as mentioned in the summons, pertains to the petitioner i.e. father of Janet Mejie and not to Janet Mejie or her mother residing in USA.

9. It is the specific contention of the petitioner that it is only on getting summons on his email that he came to know about the service of Janet Mejie through this mode and then he moved an application before the Court for refusal of service. Still further, the documents to support the contents of her affidavit, as filed by the plaintiffs, would indicate that she had seen an email dated 16.03.2022 at christinadavidson@kingcounty.gov, which will clearly indicate following three things: -

- (i) Janet Mejie does not have any WhatsApp number;
- (ii) Janet Mejie has developmental disabilities; and
- (iii) the summons were sent to the purported employer of said Janet Mejie.

10. Thus, there is clear admission of the plaintiffs though their guardian/mother that Janet Mejie was not having any WhatsApp number and was also having developmental disabilities. This admission on the part of the plaintiffs is sufficient to infer that she could not have been served on the mobile number as was provided by the plaintiffs or which was referred in the affidavit of service by Smt. Geetan Preet Mejie. Interestingly, despite knowing that Smt. Geetan Preet Mejie has developmental disabilities, even at this stage, neither any effort was made by the plaintiffs to implead said Janet Mejie through her natural guardian/mother, in whose care and custody she is residing nor any attempt was made to send the summons to her in accordance with law.

11. Although in the affidavit of service of Smt. Geetan Preet Mejie, there is no reference that summons have been served upon Janet Mejie through her employer, but assuming that summons were sought to be served upon Janet Mejie through Kingcounty, where Janet Mejie is stated to be employed, the question is whether it is a valid service?

12. First of all, it is to be noted that as per the response sent by King Counties executive office, available on the paper-book, it is quite clear that they disclosed therein that they simply forwarded the email to concerned section without intimating about service on Janet Mejie. Further, as per Article referred earlier, King Countries were merely supporting the program for people with disabilities in their community including the supported employment program and that Janet Mejie was one such hirer through the program to meet their business needs. In these facts and circumstances, when the alleged employer is only supporting the program for the people having developmental disabilities, it cannot be assumed that Janet Mejie has been duly served.

13. For the sake of arguments, even if it be assumed that Janet Mejie was in a proper state of mind to receive the summons, the question is *as to whether the summons sent through her employer is a valid service*. In this regard, Rules 25, 26 and 26A of Order V CPC, are relevant, which read as under: -

“Order V

Rule 25. Service where defendant resides out of India and has no agent.—Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court, if there is postal communication between such place and the place where the Court is situate:

Provided that where any such defendant resides in Bangladesh or Pakistan, the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides :

Provided further that where any such defendant is a public officer in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces) or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may by notification in the Official Gazette, specify in this behalf.

Rule 26. Service in foreign territory through Political Agent or Court.—Where—

(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the Official Gazette, declared in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

26A. Summonses to be sent to officers to foreign countries.—Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.”

14. The perusal of aforesaid provisions show that the main Rule 25 CPC clearly indicates that in case, a defendant is residing out of India having no agent in India empowered to accept the service, summons may be addressed to defendant at the place, where he is residing and may be sent by post or by such courier service as may be approved by the High Court or by fax message or by any electronic mail service and other means as provided by the Rules made by the High Court, in case there is postal communication between such place and the place where the Court is situated. The first proviso to this Rule is applicable to a defendant, who is residing in Bangladesh or Pakistan. The second proviso to this Rule would indicate that summons for the defendant residing out of India, may be sent for service to such officer or authority in that country, as the Central Government may by notification in the official Gazette specify, to the following such defendants

- (i) who is a public officer in Bangladesh or Pakistan but not belonging to the Bangladesh or Pakistani Military, Naval or Air Forces;
- (ii) is a servant of a railway company or local authority in that country.

15. In the present case, Janet Mejie is admittedly not residing in Bangladesh or Pakistan. Admittedly, she is not a servant of any railway company or local authority in the country, where she is residing and as such, the service through her purported employer is not as per Order V Rule 25 CPC.

16. Rules 26 and 26A of Order V CPC provide the other modes, in which summons can be sent to the officers of the foreign countries or through political agent or Court. However, no such mode has been adopted by the trial Court to

serve defendant No.8 Janet Mejie in this case.

17. In view of the entire discussions as above, it is held that Id. trial Court went in grave error in holding that defendant No.8-Janet Mejie had been served in accordance with law. It is held that she has not been served as per law.

18. As far as the locus standi of the petitioner in filing this petition is concerned, I am of the view that the authority titled **Muthulingam (Supra)** is not applicable to the facts of this case, inasmuch as petitioner is not seeking to set aside the *ex parte* proceedings or *ex parte* decree against defendant No.8-Janet Mejie; rather, being the natural father of Janet Mejie, he is only trying to protect the interest of his biological daughter, though after divorce in 1998 with his wife, said daughter is residing under the care and custody of her mother since 1998 in USA. Petitioner only wanted to bring to the notice of the Court that Defendant No.8-Janet Mejie had not been served in accordance with law. The Trial Court should not have gone into the technical aspect regarding his locus standi and should have considered the application with the lens, as to whether Janet Mejie had been served in accordance with law or not. As such, the petitioner cannot be non-suited only on the ground that he has no concern with Janet Mejie or that he has no locus standi.

19. Consequent upon the entire discussion as above, the present petition is hereby allowed. Both the impugned orders are hereby set aside qua defendant No.8-Janet Mejie by declaring that she has not been served in accordance with law. Trial Court is directed to adopt legal procedure as provided under law so as to serve said defendant No.8-Janet Majie, in accordance with law.

31.07.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No