

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.61 of 2023(O&M)

Date of Order:15.01.2024

Daljit Singh (since deceased) through his LRs

..Appellant

Versus

Mohinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. Dayal Partap Singh Randhawa, Advocate
for the appellant.ANIL KSHETARPAL, J

1. The first appellate court has set aside the ex-parte decree and ordered decision of the suit afresh. The correctness of the aforesaid order has been challenged in this revision petition.

2. It has been found that the defendants(respondents herein) were not properly served with the notices of the suit. On appreciation of the record, the first appellate court has recorded the following findings:-

“16. After giving anxious thoughts to the rival contentions and going through the record of the case, this Court is of the considered view that findings of the learned trial court on issues no.1 and 3 cannot sustain. Perusal of the record of the main case shows that after institution of the suit, the learned trial Court passed the order dated 27.08.2011 for service of the defendants through ordinary process and registered post for 28.10.2011. However, Ahlmad failed to issue the summons for 28.10.2011 and 23.01.2012. On 22.02.2012, Shri Satinder Pal Singh, Advocate appeared on behalf of defendants no.1,2, 4 to 17. However, the order is silent

with regard to issuance of any summons for the said date to the remaining defendants. Summons for the next date i.e. 10.04.2012 could not be issued due to non filing of the copy of the plaint. Thereafter, the Ahlmad did not issue the summons for 06.06.2012 and 25.08.2012. The summons issued for 05.10.2012 to the appellants were received back with the report that none of them could be found at the house despite repeated visits. On the basis of said report, the trial court recorded its satisfaction that defendants cannot be served through ordinary process and ordered their service through munadi and affixation. The summons for service of the appellants /defendants through munadi could not be issued for 22.11.2012, 18.01.2013, 02.03.2013 and 27.04.2013 due to non deposit of munadi charges. Even thereafter summons could not be issued for many a dates due to non deposit of munadi charges. Summons issued to them for 18.11.2013 were received back unserved and ultimately report was received on the summons for 05.12.2013 that munadi has been effected. The said report has been attested by witness Raghbir Singh and same purports to bear the thumb impression of Bachan Singh chowkidar in token of having received the munadi fee for effecting the munadi.

17. From the perusal of the zimni orders recorded in the main suit it is made out that on most of the dates process had not been issued by the Ahlmad. When the summons issued against defendants/ appellants for the first time for 05.10.2012 were received back unserved, the trial court ordered their service through munadi. This Court is of the view that first of all court is required to make efforts for getting effected the personal service of the defendants. However, in this case the trial court has failed to make proper efforts for getting effected the personal service of

the defendants. The plaintiffs did not comply with the orders of the court to file registered cover and thereafter they failed to file copies of the plaint on a number of dates. So far as report on the summons issued for 05.10.2012 is concerned, the said report seems to be manipulated one. It is difficult to accept that Process Server could not find any of the defendants at the house. The said report has not been attested by any witness. In the opinion of this Court, trial court should not have ordered the substituted service of the defendants on the basis of such like report particularly when the summons had not been issued to the defendants earlier on any occasion. Therefore, this Court is of the view that order regarding taking recourse to substituted service itself has not got sanction of law. No doubt, there is report regarding service of the appellants/ defendants through munadi. As per said report, munadi was effected with beat of drum and copy of the summons was affixed on the house of the defendants. There is no mention of the affixation of the copy of the plaint. It is made out that the copy of the plaint was not annexed with the summons for service of the appellants/defendants through munadi. Under these circumstances, service of the defendants/appellants as projected by the record cannot be said to be a proper service. Moreover, when the trial court resorted to substituted service without any sufficient reason, the said service cannot be treated to be valid and good service. Once it is made out that defendants/appellants had not been properly served in the main case, their version that they came to know about the ex parte decree only on 20.02.2017 cannot be doubted. There is no specific evidence that they had been informed of the ex parte decree earlier to that. Failure on their part to examine someone from the locality to prove

that respondents no.1 and 2 had proclaimed regarding ex parte decree etc. cannot be a ground to non-suit them. Once the court arrives at the conclusion that the appellants have not been properly served, their application cannot said to be barred by limitation There is no evidence to contradict the testimony of appellant that the appellants acquired the knowledge of the ex parte decree only on 20.02.2017. Under these circumstances, the trial court should have set aside the ex parte judgment and decree so as to afford proper opportunity of hearing to the defendants/appellants. It is cardinal principle of law that no one should be condemned unheard. Therefore, findings of the learned trial court on issues no.1 and 3 are set aside and these issues are decided in favour of the appellants/defendants.”

3. The learned counsel representing the petitioner contends that the village Sangrai is a small village and some of the defendants, namely, defendant no.1, 2, 4 to 17 were represented by Sh. Satinder Pal Singh, Advocate, and therefore, the respondents would have come to know of the pendency of the suit.

4. This court has considered the submissions of the learned counsel representing the petitioner.

5. It is evident that the notices sent to the respondents were received back with the report that none of them could be found at the house despite trying repeatedly. Thereafter, the trial court ordered service through the beat of drum. The petitioner did not deposit the proclamation fee on as many as four occasions. Subsequently, the proclamation was made by the beat of drum, however, the official did not affix the copy of the plaint on the conspicuous part of the house despite direction of the Court.

6. Keeping in view the aforesaid facts, the first appellate court has only directed decision of the case afresh after granting an opportunity to the respondents.
7. While exercising the revisional jurisdiction this court is not expected to interfere in such orders unless the attention of the court is drawn to any material irregularity or perversity.
8. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.
9. Dismissed accordingly.
10. However, it is pertinent to mention that the petitioner filed the suit on 27.08.2011. The trial court is directed to make sincere endeavours for expeditious disposal of the suit, preferably within a period of 9 months from the date of this order, positively.
11. All the pending miscellaneous applications, if any, are also disposed of.

January 15, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO