

**CR-6465-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(112)****CR-6465-2024****Date of Decision: - 08.11.2024****Paramjit Singh****....Petitioner****Versus****Tejwant Singh****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. G.S. Punia, Senior Advocate, with
Mr. P.S. Punia, Advocate, and
Ms. Manleen Kaur, Advocate
for the petitioner.

Mr. D.K. Singhal, Advocate
for the respondent-caveator.

**********VIKAS BAHL, J. (ORAL)**

1. Challenge in the present revision petition is to the judgment dated 28.08.2024, vide which the appeal filed by the respondent against the order dated 02.08.2018 has been allowed and the ex-parte proceedings taken against the respondent as well as the ex-parte judgment and decree have been set aside and the trial Court has been directed to restore the civil suit to its original number and both the parties were directed to appear before the trial Court on 02.09.2024 and has permitted the respondent to file written statement, with a further direction to the trial Court to dispose of the civil suit within a period of six months.

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2. Learned senior counsel for the petitioner has submitted that the judgment dated 28.08.2024 is illegal and against law and deserves to be set aside, inasmuch as, the respondent was duly served in the proceedings. In this regard, it has been submitted that the respondent, who is a resident of Kolkata, was ordered to be served through registered post and a perusal of the report on the document, which has been annexed as Annexure A-4, would show that the postman had found that the door was locked on 03.09.2013 and thereafter, there is an endorsement that “intimation served on 04.09.2013”. It is submitted that the same would show that the respondent was duly served and was thus rightly proceeded ex-parte in the present case. It is further submitted that the fact that the respondent knew about the proceedings is also apparent from the agreement dated 13.06.2013 as the respondent had compromised the matter with the present petitioner and it was decided that the said respondent will sell his half share in the house in question to the present petitioner for a total amount of Rs.4,00,00,000/-, out of which an amount of Rs.1,00,00,000/- was already paid and the balance amount of Rs.3,00,00,000/- remained as on 13.06.2013, however, since the respondent had backed out, thus, the said amount could not be paid to the respondent-defendant. It is further submitted that it is the respondent who had backed out from the said agreement and thus, there is no equity in his favour also. It is further submitted that the trial Court on 02.08.2018 while dismissing the application filed by the respondent under Order 9 Rule 7 and 13 CPC had noticed the factum of the endorsement dated

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04.09.2013 on the postal receipt.

3. Learned counsel for the respondent, on the other hand, has opposed the present revision petition and has submitted that the respondent was a resident of Kolkata and it had been rightly observed by the learned First Appellate Court that there is no order even remotely showing that the respondent-defendant was personally served or that the respondent-defendant was keeping out of the way to avoid service. It is further submitted that even the zimni order dated 26.09.2013 would show, that it was observed by the trial Court, that the summon that had been issued to defendant was received back unserved and thereafter, instead of taking further steps for service of the respondent, straightaway an application for substituted service was entertained and the same was allowed and the present respondent was proceeded against ex-parte. It is submitted that even the newspaper on which the publication was done was 'The Tribune' and as per the email dated 16.02.2018, which is a part of the record, it has been stated by the office of 'The Tribune' that they do not have any Kolkata edition as the paper is only with respect to north India and it has further been stated that the newspaper is an English Newspaper, which covers edition like Amritsar, Bathinda, Chandigarh, Delhi, Jalandhar and Ludhiana. It is further stated that a perusal of the agreement dated 13.06.2013 relied upon by the petitioner would further completely defeat the case of the petitioner as in the said agreement there is no reference to the pendency of the suit although the suit even as per the case of the petitioner was filed on 01.08.2012. It is further submitted

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that the property is highly valuable as it is a house in Section 21, Chandigarh and thus, the question of the present respondent not appearing in the case does not arise as his valuable rights are involved in the case. It is submitted that the order passed by the First Appellate Court is in accordance with law, which deserves to be upheld.

4. This Court has heard learned senior counsel for the petitioner and learned counsel for the respondent-caveator and has perused the paper-book and is of the opinion that the order dated 28.08.2024 passed by the First Appellate Court is in accordance with law and deserves to be upheld for the reasons which are detailed herein after.

5. Undisputed facts in the present case, which have been noticed in para 12 by the First Appellate Court, are that the suit which was filed by the petitioner against his brother with respect to declaration that he was the owner in possession of the House No.2218, Sector 21C, Chandigarh, was instituted on 01.08.2012 and notice was issued to the respondent-defendant for 13.09.2012 and on 13.09.2012 as well as on 11.10.2012 and thereafter, on 25.01.2013, the summons could not be issued as copy of the plaint was not supplied. It has been pointed out by learned senior counsel for the petitioner that on 08.04.2013 also fresh summon was issued for 26.09.2013. On 26.09.2013, it was observed by the Court that the summon issued to the defendant/respondent had been received back unserved and an application for substitution service was filed and thereafter, vide order dated 20.12.2013, the defendant was proceeded against ex-parte. The zimni orders dated 26.09.2013 and



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20.12.2013 which have been reproduced in the order of the First Appellate Court and are very relevant for the purpose of adjudication in the present case, are reproduced herein below:-

“Present:- Shri NK Nanda, counsel for the plaintiff.

Summons issued to defendant received back unserved. An application for substituted service of defendant has been moved by the counsel for the plaintiff which is supported by an affidavit of plaintiff. Heard. In view of contents mentioned in the application, same stands allowed. Let defendant be now served through publication in the newspaper ‘The Tribune’ for 20.12.2012 on filing of publication charges.

*Jaswinder Singh
CJ(JD)/26.9.2013*

*Present:- Shri NK Nanda, counsel for the plaintiff.
None for defendant.*

Publication issued against defendant received back duly published. Case called several times since morning. None has appeared on behalf of defendant. Waited sufficiently. It is already 3.30 pm. Hence, defendant is proceeded against exparte. Now to come up on 22.2.2014 for exparte evidence.

*Jaswinder Singh
CJ(JD)/20.12.2013 “*

A perusal of the above zimni orders would show that on 26.09.2013, it was recorded by the trial Court that the summon issued to the defendant has been received back unserved, but no further steps were taken for effecting personal service of the respondent/defendant, who was admittedly a resident of Kolkata. Straightaway an application for

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substituted service of the respondent was entertained and allowed and it was ordered that the publication be carried out in 'The Tribune'.

6. It was rightly observed by the First Appellate Court that the said procedure adopted was in violation of the provisions of Order 5 Rule 20 CPC, which specifically provided that the Court was required to record the satisfaction that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons could not be served in the ordinary way and thus, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house. Neither the same was done nor any satisfaction was recorded. It was also observed by the First Appellate Court that no notice was ever affixed in some conspicuous place in court house or house of the defendant, which is also mandatory requirement of Order 5 Rule 20 CPC and the said aspect could not be disputed before this Court.

7. The reliance on the report of the postman on behalf of the petitioner dated 03.09.2013/04.09.2013 would not in any way further the case of the petitioner, inasmuch as, a perusal of the zimni order dated 26.09.2013, which is subsequent to the said alleged receipt would show that it was recorded by the trial Court that the summon issued to the defendant had been received back unserved and thus, even as per the trial Court the service had not been effected on the defendant personally. Moreover, it is not in dispute that there is no signature of the respondent on the said acknowledgment nor the procedure as prescribed under Order

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5 Rule 20 CPC has been followed. The First Appellate Court has also specifically stated that there is no mention of the said receipt in the zimni order and thus, the said order could not be justified on the basis of the said alleged receipt.

8. Additionally, it would be relevant to note that the agreement dated 13.06.2013, which has been relied upon by the petitioner would in fact further the case of the respondent, inasmuch as, even as per the case of the petitioner the said agreement was entered subsequent to the suit, which is stated to be instituted on 01.08.2012 and a perusal of the said agreement would show that there is no reference to any pendency of any suit which also *prima facie* shows that the petitioner never informed the respondent about the pendency of the suit nor the respondent was aware of the said suit. Moreover, in the agreement, there is no reference that since the matter as per the case of the petitioner has been compromised, the parties would make a statement before the Civil Court. It is very strange that once a civil suit is pending and apparently, as per the case of the present petitioner, a compromise has been effected by virtue of a written agreement, the parties would not chose to appear before the Civil Court and dispose of the suit in terms of the said compromise. The said aspect also goes against the petitioner.

9. The learned counsel for the respondent has also highlighted the fact that there is an email dated 16.02.2018 on the record, which shows that there was a response given by the office of 'The Tribune' to the respondent stating that they do not have any edition in Kolkata and that

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the Tribune is a English newspaper, which covers edition like Amritsar, Bathinda, Chandigarh, Delhi, Jalandhar and Ludhiana. Although, the petitioner has sought to rely upon an email dated 11.05.2012 (Annexure A-5), but it is not in dispute that the said email has not been produced on record of the trial Court or the 1st Appellate Court and moreover, the said email is dated 11.05.2023, whereas, the relevant date for consideration of the circulation of 'The Tribune' newspaper in Kolkata is 26.09.2013 and 20.12.2013, when the respondent was proceeded against ex-parte. Thus, the said fact also supports the respondent.

10. It is a matter of settled law that cases should be decided on merits and not merely on technical grounds and thus any interference with the impugned order would cause serious prejudice to the rights of the respondent, who has a right to defend his rights in the house in question. This Court finds that there was no occasion for the respondent to not appear, as the property is apparently very valuable, and no party would let the property go from their hands without contesting the same. It would also be relevant to note that in pursuance of the impugned order dated 28.08.2024, the respondent has already filed his written statement and the matter is now fixed for 18.11.2024 and the First Appellate Court has further directed that the trial Court would make an endeavour to dispose of the suit within a period of six months. Thus, the said order balances the rights of both the parties and deserves to be upheld.

11. Keeping in view the above-said facts and circumstances, the

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impugned order dated 28.08.2024 is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

November 08, 2024

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(VIKAS BAHL)

JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes