



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

113

CR No.1124 of 2024 (O&M)

Date of Decision :16.05.2025

Varun Singh Dhanda**.....Petitioner****Versus****Pardeep Kumar and another****..... Respondents****CORAM: HON'BLE MR.JUSTICE VIKRAM AGGARWAL**

Present : Ms. Sandhya Gaur, Advocate for
Ms. Yamini Nain, Advocate for the petitioner.

VIKRAM AGGARWAL, J. (Oral):

The present revision petition assails the order dated 12.12.2023 (Annexure P-4) and 06.02.2024 (Annexure P-5), passed by the Court of Additional Civil judge (Sr. Divn.) Panchkula, vide which the respondents-defendants were ordered to be summoned by way of munadi.

2. A suit under Order XXXVII Rule 2 of the Code of Civil Procedure 1908, (for short 'CPC') was instituted by the petitioner-plaintiff against the respondents-defendants. Notice was ordered to be issued to the respondents-defendants vide order dated 11.09.2023 (Annexure P-1).

3. As is apparent from the record, there were two defendants namely Pardeep Kumar and Manjeet Sharma. As regards Pardeep Kumar, the Process Server gave a report (Annexure P-3) that Pardeep Kumar could not be found at the given address his brother Manjeet Sharma was present, who, however, refused to receive the summons. Upon his refusal to receive the summons, a copy of the summons was pasted at the entrance of the house of defendants. The affixation was witnessed by the Chowkidar Manbir who also appended his



signature on the summons. As regards Manjeet Sharma, a report of the refusal was given, affixation of the summons having been witnessed by the Chowkidar Manbir. When the service report was put up before the trial Court, it ordered that service of the respondents-defendants be effected by way of munadi (Annexure P-4).

4. Learned counsel for the petitioner submits that the procedure as envisaged under Order V Rules 17 and 19 of CPC and Volume IV, Chapter-7 Part-B(b)(4) of the High Court Rules and Orders was not followed. She submits that even though, the affidavit of the Chowkidar was not present, the Court should have followed the procedure as envisaged under Order V Rules 17 and 19 CPC and should have examined the serving Officer and could have even made further inquiry into the matter instead of straightaway ordering service by way of munadi.

5. I have considered the submissions made by learned counsel for the petitioner and find that the same are worthy of acceptance. Order V Rules 17 and 19 CPC lay down as under:-

“17. Procedure when defendant refuses to accept service, or cannot be found.—Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, 2[who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed



thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

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19. Examination of serving officer.—Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.”

6. Still further, Volume IV, Chapter-7 Part-B (b) (4) and (c) (3) (v) of the High Court Rules provides as under:-

“4. A form of affidavit of the process-server which should accompany the return of the summons has been prescribed by the High Court. See Appendix I to this Chapter. Before passing an *ex part* order the Court should make it a point to see that this affidavit duly filled in, is with the report of the process-server.

3(v). If the service be made under Order V, Rule 17, it should, in like manner, be proved according to the circumstances of the case, either that the persons to whom the summons or notice was tendered refused to sign the acknowledgment, though he was informed of the nature and contents of the document, or that the defendant could not be found or was absent from his residence, and that there was no agent empowered to accept service, nor any other person on whom the service could be made; and, in either case, that the house, on the outer door of which a copy of the process was affixed, was the ordinary residence or place of business of the defendant at the time when it was so affixed. It is the duty of the Court in such cases to satisfy itself after taking the process-server’s affidavit or statement on solemn affirmation and after such further enquiry as may be necessary, that reasonable efforts were made without success to serve the defendant personally, and then declare whether the summons was ‘duly served’. Without such a declaration under Order V, Rule 19, the summons cannot be held to be duly served.”



7. A perusal of the statutory provisions and the order under challenge clearly reveals that the procedure as envisaged in the Order V Rules 17 and 19 CPC and the High Court Rules and Orders was not followed and straightaway munadi was ordered.

8. In the considered opinion of this Court, the Court concerned was duty bound to follow the procedure referred to above.

9. That being so, present revision petition is allowed and the impugned orders dated 12.12.2023 and 06.02.2024 (Annexures P-4 and P-5) are set aside. The trial Court is directed to proceed from the stage of receipt of report of refusal in accordance with procedure as envisaged under Order V Rules 17 and 19 of CPC and the High Court Rules and Orders.

Pending application(s), if any, stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

16.05.2025
Manoj Bhutani

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