

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

CR-719-2021 (O&M)

Date of Decision: January 23, 2025

Lalit Arora (since deceased) through his LRs

...Petitioner

Versus

Sumit Sawhney and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Akshay Jindal and Mr.Vijayveer Singh, Advocates
for the petitioner.

Mr.P.S.Saini and Mr.Atul Goyal, Advocates
for respondent No.1 (contesting respondent).

ARCHANA PURI, J.

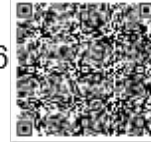
Challenge in the present revision petition is to the order dated 18.02.2020 (Annexure P-10) passed by learned Civil Judge (Sr. Divn.), whereby, an application filed by the petitioner-defendant under Order 9 Rule 7 CPC, was dismissed.

In pursuance of the notice issued, respondent No.1-contesting respondent, made appearance through counsel.

Learned counsel for the parties heard.

The essential facts, to be noticed, are as follows:-

That, initially, respondent-plaintiff Sumit Sawhney, filed a suit against the present petitioner-defendant, thereby, seeking specific performance of



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the agreement to sell dated 16.12.2008. The said suit was instituted on 02.01.2016 and notice of the same was ordered to be issued for 20.01.2016. However, service of the defendant was not effected for that date and ultimately, when the file was taken up on the date fixed, following order passed:-

“Notice issued to the defendants received back with the report of refusal. In view of the report this Court is of the opinion that the defendant cannot be served by way of ordinary process. Now, notice be issued to the defendant by way of substituted service through munadi for 26.02.2016 on filing of munadi fee etc.”

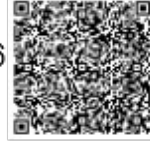
On 26.02.2016, in view the of the munadi having not received back, learned trial Court had further passed the following order:-

“Munadi issued to the defendant received back unserved. Now, fresh notice be issued to the defendant by way of substituted service through munadi on 25.04.2016, on filing of munadi fee etc.”

However, on the subsequent date i.e. 25.04.2016, learned trial Court, while making an observation that munadi was duly effected, passed the order, as herein given:-

“Munadi issued to the defendant received back duly served. Case called several times since morning but neither the defendant nor anyone else on his behalf has turned up. It is already 03.20 P.M. No more wait is justified. Hence, the defendant is, hereby, proceeded against ex-parte.

Adjournment requested for ex-parte evidence. Heard. Now, to come up on 23.05.2016 for ex-parte evidence of the



plaintiff.”

As such, it is evident that petitioner, who was defendant before trial Court was proceeded against ex-parte on 25.04.2016.

Feeling aggrieved, the defendant filed an application for setting aside of the ex-parte proceedings and the copy of the application is Annexure P-8. Reply was filed to the said application and thereupon, vide impugned order, the application for setting aside the ex-parte proceedings, was dismissed.

However, even though, the orders passed by learned trial Court, have been reproduced aforesaid, but however, it is necessary to note that the copies of the reports made by the serving official, vis-a-vis, the manner of effecting of service upon the defendant, are coming on record.

However, at this stage, there is no necessity to discuss in detail about the manner of service made by the serving officials, as learned counsel for respondent No.1 has made statement that he has no objection, if the impugned order is set aside.

Suffice to make mention that reports of serving officials, which have been brought in record, are not in consonance with the requirement under Order 5 Rule 17 CPC. In the light of the same, the order, proceeding against the petitioner-defendant, is palpably wrong and do warrant interference by this Court.

Hence, the present revision petition is hereby allowed and the impugned order is set aside.



However, it is pertinent to mention that the suit for specific performance of the agreement was instituted on 02.01.2016 and now, on account of passing the impugned order, it continues to be at initial stage. In the light of the same, the petitioner-defendant is hereby directed to make appearance before learned trial Court, on the next date of hearing and also to ensure about extending full cooperation to the trial Court to complete the pleadings, without any further loss of time. Thereupon, learned trial Court, after framing of the issues, shall make an endeavour to decide the case expeditiously.

January 23, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No