

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.

C.R. No. 4981 of 2008 (O&M)  
Date of Decision: 24.12.2008

Darshan Singh and another.

..... Petitioners through Shri  
S.C.Kapoor, Senior  
Advocate with Shri Pankaj  
Jain, Advocate.

Versus

Amarjit Singh.

..... Respondent through Shri  
Rakesh K. Sharma,  
Advocate.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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**Mahesh Grover,J.**

This is a revision petition under Article 227 of the Constitution of India for setting aside ex parte judgment and decree dated 24.3.2000 (Annexures P1 and P2) and order dated 22.11.2006 (Annexure P6) passed by Civil Judge (Junior Division), Chandigarh & order dated 5.9.2008 (Annexure P8) of the Additional District Judge, Chandigarh by which the prayer of the petitioners made vide their application under Order 9 Rule 13 read with Section 151 of the C.P.C. and Section 5 of the Limitation Act was

declined.

The facts may be noticed in brief.

The petitioner no.2- Smt.Mona Singh, owned a property bearing House No.1670, Sector 22-B, Chandigarh, which she agreed to sell to respondent-Amarjit Singh.

A suit for specific performance was filed by the respondent alleging that petitioner no.2 was the owner of the aforementioned house and she, while acting through her husband and attorney, namely, Shri Darshan Singh – petitioner no.1, entered into agreement to sell the said house vide deed dated 16.3.1995 for a total sum of Rs.5.00 lacs. The respondent had initially paid Rs.50,000/- and thereafter, paid another sum of Rs.25,000/- and subsequently, another sum of Rs.2.00 lacs to petitioner no.1, who had acknowledged the receipt of the same on the reverse side of the pages of the agreement to sell. The last date for executing the sale deed was 31.5.1995, but, according to the respondent, the petitioners defaulted in their commitment and did not produce the requisite income tax clearance etc. and also did not get 'no objection certificate' from the Estate Officer. Despite the efforts of the respondent, the petitioners did not comply with the said terms. A legal notice was sent to the petitioners and attempts were made by him to meet them, but they did not respond, as a result of which he was compelled to file the suit for specific performance of the agreement dated 16.3.1995. In the alternative, a plea for grant of damages to the tune of Rs.5.50 lacs was made.

The petitioners were allegedly served through publication as

they were residing in the United Kingdom. They had even given an alternative address of House No.1670, Sector 22-B, Chandigarh. Since the petitioner did not appear, an ex parte judgment and decree was passed against them on 24.3.2000.

An application for setting aside the aforesaid ex parte judgment and decree was preferred by the petitioners on 5.5.2006 under the provisions of Order 9 Rule 13 read with Section 151 of the C.P.C. and Section 5 of the Limitation Act, which was dismissed by the Civil Judge (Junior Division), Chandigarh vide his order dated 22.11.2006. An appeal against the said order was also dismissed by the Additional District Judge, Chandigarh on 5.9.2008.

Hence, this revision petition.

The sole case of the petitioners as represented before this Court is that they were never served with the notice of the proceedings against them in the civil suit. It was submitted by the learned counsel for the petitioners that the petitioners were residents of 106, Richmond Road, Ilford Essex, IG1 1 JZ, England and they never had an inkling of the proceedings against them and that the entire proceedings against them stood vitiated on this score alone.

Learned counsel for the petitioners further contended that the impugned orders, as also the order by which the petitioners were proceeded ex parte in the suit were erroneous. He submitted that before passing an order for substituted service under the provisions of Order 5 Rule 20 of the C.P.C., the concerned Court was required to pass an order recording its

satisfaction that it was not possible to serve the defendants by any other means and it was only thereafter that such a recourse could have been taken.

That apart, learned counsel for the petitioners contended that even if it is accepted that there was service upon the petitioners by way of publication, yet, the entire exercise was farcical because the publication was carried out on 19.5.1998 for a date on 25.5.1998 which was fixed before the learned trial Court. It was submitted that it cannot be expected that a person living in United Kingdom would be able to attend the proceedings considering the short time the petitioners would have got to react to the notice.

In support of his contentions/ submissions, learned counsel for the petitioners placed reliance on Ramesh Pal Versus Hans Raj Kapur and others, 1989(2) P.L.R. 633; and Gurdeep Kaur versus Vinod Kumar Lamba, 1994(2) P.L.R. 185.

In Ramesh Pal's case (supra), it was held by a learned Single Judge of this Court as under:-

“that no copy of the plaint or a concise statement of it was sent along with the newspaper by which the substituted service was effected under postal certificate on the respondent nor there is anything on the record to show that the summons were affixed on the door of the house where the respondent last resided nor the publication in the newspaper contains the concise statement of the case relating to which the respondent is summoned in Court and there was only a time lapse of six days between the

date of publication of the notice and the date when the respondent was required to appear, the order proceeding ex parte cannot be sustained. Further, in view of these undisputed circumstances it cannot be assumed that the respondent was duly served and he had been proceeded ex parte in accordance with law. Reasonable opportunity to defend a case is the minimum requirement of the rule of natural justice apart from his legal rights.”

In paragraph 11 of the judgment in Gurdeep Kaur's case (supra), another learned Single Judge of this Court observed as under:-

“11. Substituted service as per provision contained in Order 5, Rule 20 can be ordered only if the respondent is keeping out of way for the purpose of avoiding service or if for any other reason the summons cannot be served in ordinary course. The Court has necessarily to record its satisfaction that the defendant is keeping out of the way for the purpose of avoiding service. Mr.Arun Jain, learned counsel appearing for the petitioner, rightly contends that Pritam Singh, tenant of the premises in dispute was proceeded against ex parte in a wholly illegal manner as not only that the provisions of Order 5 Rule 20 of the Code of Civil Procedure were not kept in view but also the order for proceeding ex parte was contrary to the order dated July 30,1991. Mr. S.C.Kapoor, learned Senior Advocate appearing for the respondent, has addressed no meaningful

arguments which may persuade me to take a different view. It is, thus, held that the ex parte proceedings initiated against Pritam Singh were wholly illegal and without jurisdiction.”

On the other hand, learned counsel for the respondent contended that the petitioners can not make a grievance of the fact that they were not served as they have not denied that they had not received the contents of the publication which were sent to them through air-mail under the orders of the learned trial Court. It was next contended that looking at it from any angle, the conduct of the petitioners is not bona fide because firstly they have not denied the aforesaid fact and secondly, the ex parte judgment and decree was passed in the year 2000 and according to the petitioners themselves, they had acquired the knowledge of the same through their tenant, who was residing in House No.1670, Sector 22-B, Chandigarh, which is also the alternative address given by them on 10.2.2005 and thereafter, the file was inspected on 24.10.2005, yet, the application for setting aside the ex parte proceedings was moved on 5.5.2006. On the strength of this, learned counsel for the respondent contended that the petitioners have no case in their favour.

To support his contentions, learned counsel for the respondent placed reliance on M/S EMESS Advertising service Versus The Hindustan Times Ltd., AIR 1998 Delhi 14, wherein a Division Bench of Delhi High Court observed in paragraph 6 of the judgment as under:-

“6. Suit file reveals that summons for July 26,1990 was published in the issue dated April 9,1990 of the 'Statesman'. A

copy of the newspaper was simultaneously sent under certificate of posting on April 9,1990 itself to the appellant on its address at 2881, Hardhian Singh Road, Karol Bagh, New Delhi, which was the address of the appellant as shown in the plaint. Significantly I.A. 2026/91, which is supported by the affidavits of Smt.Vimla Sharma and Shri Yograj Sharma, Advocate, is completely silent either that 2881, Hardhian Singh Road, Karol Bagh, New Delhi, was not the address of the appellant at the time the suit was instituted or that the issue dated April 9,1990 of 'Statesman' wherein the summon was published, was not delivered to the appellant on the said address. That being the position, the appellant failed to rebut the presumption under Section 114 of the Evidence Act arising in respondent's favour regarding service of summons through publication for July 26,1990. Aforementioned application, thus, did not disclose sufficient ground to set aside the ex parte decree dated February 5,1991. Learned single Judge thus was fully justified in dismissing the application in terms of the impugned order.”

I have heard the learned counsel for the parties at some length.

Records were called for and they have been perused.

In view of the contentions of the learned counsel for the petitioners, it would be appropriate to notice the zimni orders leading the passing of an order under Order 5 Rule 20 of the C.P.C. for substituted

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service by way of publication. It would also be appropriate to trace the proceedings ever since their inception. The same are reproduced below:-

“ 14.3.1996

Present: Shri Gurpreet Singh, Cl. for plaintiff.

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Suit received by entrustment. It be checked and registered. Dasti summons of the suit along with injunction application be given to the defendants on filing of PF etc. returnable to 2.4.96.

I have heard the learned counsel for the plaintiff on the injunction application and have also gone through the documents placed on record and there is a prima facie case in favour of the plaintiff, at this stage. Hence the parties are directed to maintain status quo regarding alienation of suit property known as House No.1670, Sector 22-B, Chandigarh till 2.4.96.

Compliance u/o 39 rule 3 CPC be made accordingly failing which the status quo order shall stands vacated automatically.

Announced.  
14.3.96

Sd/-  
Sub Judge Ist Class,  
Chandigarh.



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2.4.1996

Present: Sh.Gurpreet Singh, Cl. for plaintiff.

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The defendants were ordered to be summoned by issuance of dasti summons and dasti summons had been received back unserved. Now at the request of learned counsel for plaintiff, the both of defendants are again ordered to be summoned by dasti summons only on filing of PF returnable to 18.4.96.

Sd/-

SJIC/2.4.96

18.4.1996

Present: Sh.Gurpreet Singh, Cl. for the plaintiff.

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Defendants not served. Both the defendants be again served for 22.7.96 on filing PF, RC & AD. Dasti be obtain, if desired.

Sd/-SJIC/18.4.96

22.7.1996

Present: Sh.Gurpreet Singh, Cl. for plaintiff.

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Summons issued against defendants had received back unserved. Now the defendant is again ordered to be summoned on filing of PF, RC, copies within 7 days returnable to 27.8.96 and status quo be continue.

Sd/-

SJIC/22.7.96

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27.8.1996

Present: Sh.Gurpreet Singh, Cl.for plaintiff.

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Summons issued against defendants had received back unserved. Now at the request of learned counsel for plaintiff, both the defendants are again ordered to be summoned on filing of PF, RC, copies etc. within 15 days returnable to 13.11.96 and status quo regarding alienation of suit property be continue.

Sd/-  
SJIC/27.8.96

13.11.1996

Present: Sh.Gurpreet Singh, Cl. for plaintiff.

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Summons issued against defendant had not been received back served or unserved. Now at the request of learned counsel for plaintiff, defendants are again ordered to be summoned on filing of PF, RC, copies etc. within 15 days returnable to 17.1.97 and status quo regarding alienation of suit property be continue.

Sd/-  
SJIC/13.11.96

17.1.1997

Pr.As above.

Summons not issued for want of PF. Ld.counsel for the plaintiff had filed application for substitution service of defendants by way of publication. Since the PF had not been

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filed and process against defendants cannot be issued despite filing application for service of defendants by way of publication. Now at the request, fresh notice to defendants be issued on filing of PF etc. within (sic) days returnable to 15.3.97.

Sd/-/SJIC/17.1.97

15.3.1997

Present: Counsel for the plaintiff.

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Summons issued against the defendants not received back served or unserved. An application has been moved for service of defendants by way of publication in the newspaper for service of def. who is living in abroad. Now at the request, the defendants be again summoned by way of summons on filing of PF etc. returnable to 9.5.97.

Sd/-/SJIC.15.3.97

9.5.1997

Pr.As above.

Registered AD sent against the defendant had not been received back served or unserved. Whereas cutting of the newspapers was also not produced by the ld. cl. for the plaintiff. Now at his request, the defendant is again ordered to be summoned on filing of PF, RC, copies etc. returnable to 30.7.1997.

Sd-/SJIC/9.5.1997

30.7.1997

Present:

Defendant not served. Perusal of the file reveals that defendants are residing in England and this fact had also been brought to the notice of the Court by the ld. counsel for the plaintiff that defendants are resident of England and cannot be served through ordinary process. Now both the defendants are summoned by way of PF, RC copies etc. through concerned Embassy returnable to 22.10.97.

Sd/- SJIC/30.7.97

22.10.1997

Present: As before.

The ld.PO is on leave from 16.10.97 to 16.11.1997. Now, the case stands adjourned to 25.11.1997 for proper order.

Sd/-Reader/22.10.97

25.11.1997

Present:Counsel for the plaintiff.

Case received by way of transfer from the Court of Mrs. Paramvir Nijjar, SJIIC,. Chd. It be checked and registered. Fresh notice be issued to the defendant through regd. Post for 24.2.98 on filing of PF, RC and copy within 3 days.

Sd/-SJIC/25.11.97

24.2.1998

Present: Counsel for the plaintiff.

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An application for service of the defendants by way of publication in “Manchester Guardian” is filed. For its consideration, next date is 27.2.98.

Sd/- SJIC.24.2.98

27.2.1998

Present: Counsel for the plaintiff.

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There are two addresses of the defendants and one address is of India and second address is of U.K. and at the instance of the counsel for the plaintiff defendants be got served through publication in “English Tribune” for the Indian address and Tribune authorities are also directed to send one copy of the newspaper in England at the address of the defendants for 25.5.98.

Sd/- SJIC 27.2.98

25.5.1998

Present: Counsel for the plaintiff.

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Publication effected in the “English Tribune” of dtd. 19.5.98 but none appeared on behalf of the defendants, either in

person or through counsel. It is already 3 p.m. Hence, the defendants are proceeded against ex parte. Now, to come up for ex parte evidence for 31.7.98.

Sd/SJIC. 25.5.98”

It is apparent from the perusal of the above reproduced zimni orders that the suit was instituted on 2.4.1996 when it came up before the Court for the first time and the publication was directed to be carried out vide order dated 27.2.1998. Ex parte proceedings were ordered against the petitioners on 25.5.1998 after noticing the fact that the publication had been duly carried out. It is also to be noticed that the respondent made sincere attempts even to get the publication effected in Manchester Guardian because this was his prayer in the application. It is the Court which took recourse to the other means by ordering publication in the English Tribune and directed that a copy of the publication be sent to the petitioners at their address in United Kingdom. Exhibits P11, P12, P13 and P14 are the receipts of the postal authorities indicating the dispatch of the publication at the address in England. The petitioners have not denied the receipt of these communications/ dispatches. The address of the petitioners is also the same as the one on which the publication was sent.

Section 114 of the Indian Evidence Act, 1872 (for short, 'the Act') raises a strong presumption regarding the receipt of such documents. The said Section is reproduced below:-

**“114. Court may presume existence of certain facts.-** The Court may presume the existence of any fact which it thinks

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likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

Cumulatively when these two facts are considered together, the net effect is that the Court ordered the publication after almost two years of making an attempt to serve the petitioners. The petitioners had given two addresses which addresses have not been denied to be incorrect. Both the addresses are admitted by them, so much so, that the subsequent knowledge of the exparte decree has also been attributed to the information from the tenant residing in House No.1670, Sector 22-B, Chandigarh which is the alternative address given by the petitioners. Therefore, even if the Court did not expressly use a phrase which would pay courtesy to the language of Order 5 Rule 20 of the C.P.C., yet, it is to be inferred from the efforts made during the course of proceedings on the basis of the zimni orders reproduced above that there was sufficient reason for the Court to adopt the process of substituted service and no fault can be found with the process. Strict adherence to the language of the statute may be a virtue but not a necessity, if the facts indicate enough and sufficient compliance.

The second obvious inference is that the petitioners had necessarily acquired the knowledge of the proceedings as they have not denied the dispatches which were sent to them by air-mail which is akin to the registered notice through postal authorities informing them about the publication.

Even if this fact were to be ignored, then also it is the case of

the petitioners that they had acquired the knowledge of the ex parte decree against them on 10.10.2005 when the tenant, who is residing in the alternative address given by them in Sector 22-B, Chandigarh informed them about the ex parte decree passed by the Court.

It is strange and illogical that a tenant would have knowledge of the ex parte decree against the petitioners, but when the summons were sent to this address repeatedly, he would not inform them about the pendency of the case against them. More-so because the summons during the process of the trial were being sent repeatedly implying necessary awareness to the tenant while it is not expected that the existence of an ex parte decree would be made known to him either through the process of the Court or otherwise because notices were not issued thereafter. Besides this, it is also the case of the petitioners that the file was inspected on 24.10.2005 and yet, the proceedings for setting aside were initiated only on 5.5.2006.

It is not expected of a prudent person, who would come to know of an ex parte decree seriously and prejudicially affecting his rights, would sleep over the matter for almost seven months before making an attempt to get the legal redress. There is hardly any explanation for this lapse and the only reason that has been given is that they had engaged a counsel in March, 2006 and prior thereto, they were unable to come to India. Even after March, 2006, the proceedings were initiated after lapse of about two months.

Thus, looking at this from any angle, the petitioners have failed to substantiate their case and they have been unable to put up a plausible



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and convincing demonstration of their not having acquired the knowledge of the proceedings which were made known to them through publication and as observed earlier. Even otherwise, the application under Order 9 Rule 13 of the C.P.C. was filed much belatedly without any cogent explanation.

Consequently, the revision petition is devoid of any merit and is dismissed.

**December 24,2008**  
**“SCM”**

**( Mahesh Grover )**  
**Judge**