



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.396 of 2022 (O&M)

Date of Order:24.04.2025

Hardev Singh and another

.Petitioners

Versus

Maya Ram

..Respondent

CR No.884 of 2024(O&M)

Hardev Singh

...Petitioner

Versus

Maya Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vineet Chaudhary, Advocate, for the petitioner.
Mr. Som Nath Saini, Advocate, for respondent no.1.

ANIL KSHETARPAL, JUDGE (Oral)

1. With the consent of the learned counsel representing the parties, two connected revision petitions shall stand disposed of by this common order.
2. CR No.396 of 2022, has been filed to challenge the correctness of the concurrent orders passed by the courts below while dismissing the defendants' application to set aside the ex-parte decree, whereas, in CR No.884 of 2024, the order passed in execution of the ex-parte decree is challenged.
3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
4. Sh. Maya Ram filed a suit against Sh. Hardev Singh and his father Sh. Jivna Ram for grant of decree of permanent injunction restraining



the defendants from interfering in the peaceful possession and ownership over the property marked as 'GHE', shown in red colour in the site plan attached with the plaint. The suit was listed before the court for the first time on 19.12.2012, and the following order was passed:-

“Suit received by entrustment. It be checked and registered. Now notice of the suit as well as stay application be given to the defendants for 07.01.2013 on filing of PF/RC and copies of plaint and applications.”

5. Notices were issued to the defendants through registered post, however, no notice through process server was issued. The notices were received back with the report of refusal. On 07.01.2013, the court passed the following order:--

“Registered summons issued to the respondent received back with the report of refusal. Now in the interest of justice, fresh notice be given to the defendant for 15.01.2013. Affixation be also made on the residential address of the defendant.”

6. It is evident that the court was not satisfied with the report of refusal, hence, it directed issuance of fresh notices to the defendants for 15.01.2013.

7. The process server submitted the following report:-

“Sir,

Summons were affixed by visiting the house of Jiwana Ram of Village Sabka in village Sabka on the spot. Signature of Chowkidar was taken as a witness on the spot. Report is submitted. Babu Ram P.S”.

8. On the basis of this report, the trial court proceeded against ex-



parte assuming that the summons have been served. Ultimately, the ex-parte decree was passed against the defendants on 25.09.2013.

9. The defendants filed an application under Order IX Rule 13 CPC, which has been dismissed by both the courts below.

10. Order V Rule 17 of the Code of Civil Procedure, 1908, lays down the procedure when the defendant refuses to accept service of notice or cannot be found. If a defendant or their agent refuses to acknowledge service, or the process server cannot find the defendant after due diligence, a copy of the summons must be affixed to the defendant's residence or business, which reads as under:-

“Order 5, Rule 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 acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, 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 do, and the name and address of the person (if any) by whom the



house was identified and in whose presence the copy was affixed.”

11. It is evident that for the first time, the notice was sent only through registered post which was received back with the report of refusal, however, the court was not satisfied with the aforesaid report, hence, ordered issuance of fresh notice.

12. Once fresh notice was issued, the process server was required to fulfill the requirements of Order V Rule 17 CPC, which provides that the process server will tender the notice to the defendant or his agent or any other person. If he refuses, then the process server can affix the notice. If the process server after using all due and reasonable diligence, is not able to find the defendant, who is absent from his residence at the time of his service and there is no likelihood of his being found at the residence within a reasonable time, then the process server can proceed to affix a copy of the summons on the outer door or some conspicuous part of the house. It is evident from the report dated 14.01.2013, that the process server has neither recorded satisfaction that the defendants or their agents have refused to accept notice or they cannot be found despite due diligence within the reasonable time. The process server proceeded to affix the summons without recording any reason. The procedure followed by the process server was not in accordance with Order V Rule 17 CPC.

13. Both the courts have overlooked this significant aspect of the matter. There is no evidence to the effect that the summons were ever tendered to the defendants. The Postman who made a report of refusal of summons for the first time when the notices were sent through has also not been examined. Service of notice of the suit upon the defendants is an



important aspect of the matter. The Presiding Judge should be careful in issuing summons and then proceed against ex-parte. It is expected that the court should examine the report and analyze the same before proceeding ex-parte against the defendants.

14. Keeping in view the aforesaid discussion, the impugned orders passed by both the courts below are set aside. The ex-parte decree against the defendants is also set aside and the suit filed by the plaintiff is restored to its original number. The defendants (petitioners) shall be granted opportunity to contest the case.

15. Civil Revision No.396 of 2022, stands allowed.

16. Civil Revision No.884 of 2024, has been rendered infructuous because the execution of the ex-parte decree has been set aside.

17. The parties through their learned counsel are directed to appear before the trial court on 23.05.2025.

18. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

April 24, 2025

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