



CR-688-2020(O&M)

122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-688-2020(O&M)

Date of decision: 20.03.2025

Mahesh Sharma and another

..Petitioners

Versus

Surjit Singh Mahal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Sodhi, Advocate for the petitioners

Ms. Rupinder Kaur Thind, Advocate for respondent no.1

ANIL KSHETARPAL, JUDGE

1. The petitioners herein are defendant No. 6 and 9 in a suit filed by respondent No. 1-Surjit Singh Mahal for possession and various other reliefs. Originally, the notices sent to the petitioners were received back with the report that they are not residing at the given address.

2. On 5th March 2018, the court passed the following order:-

“Written statement filed today by the defendants no.1 to 4, 7 and 8. Copy supplied.

Notice issued to the defendants no.5, 6 and 9 received back for want of correct address. Let correct address of the defendants no.5, 6 and 9 be filed within two days and thereafter fresh notice be issued for 12.4.2018.”

3. On 12th April, 2018, the court passed the following order:-

“Correct address not filed. Let the same be filed within three days and thereafter fresh notice be issued to the defendants no.5, 6 and 9 for 30.5.2018.”

4. Thereafter, an application was filed by the plaintiffs under Order V Rule 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) asserting that the defendants are residing at the same address

**CR-688-2020(O&M)**

and they are intentionally and wilfully avoiding receiving the summons. The court, without recording satisfaction, as required Under Order V Rule 20 CPC ordered service through publication in the newspaper 'Jagbani'. Ultimately, publication was carried out and the petitioners were proceeded against ex-parte. They filed an application for setting aside the ex-parte proceedings, which has been dismissed by the trial court without even calling for the reply on the ground that statements of witnesses produced by the defendant and plaintiff have been examined. Hence, the petitioners have been permitted to join the proceedings.

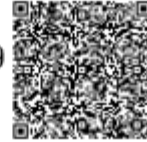
5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. Learned counsel representing the petitioners submits that defendant no.6-Mahesh Sharma (petitioner no.1) is shown to be residing at 70-B, Ranjit Avenue Amritsar whereas this property was sold by him on 29th June 2015. He further submits that despite direction of the court, correct address was not furnished and the report of Bailiff/ Process Server was ignored by the court while ordering publication. He further submits that the court never admitted to send personal notice or through registered post.

7. Per contra, learned counsel representing the respondent submits that the publication has been carried out. Hence, their application deserves to be dismissed.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. It is evident from reading of order dated 30th, May 2018 that the court passed the order directing publication of notice in the newspaper

**CR-688-2020(O&M)**

without recording its satisfaction, which is sine qua non for such order. Service of notice through publication is a method of substituted service. However, it is not replacement to personal service. The notices sent to the petitioners through court official were returned back with the report that they are not residing at the given address. Hence, the court should have insisted upon the plaintiff to give their correct address. Affidavit of the plaintiff to the effect that the petitioners are residing at the given address could not be accepted on the face of it, particularly when there was report of the court official. The court was required to adopt other means like sending notices through registered post so as to verify the correctness of the affidavit filed by the plaintiff.

10. The suit is still pending. There is a registered sale deed in favour of defendant No. 9 executed by defendant No. 5 with respect to immovable property, which is subject matter of the challenge in the suit. The substantive rights of defendant No. 9 would be adversely affected if he is not granted proper opportunity to contest the case. Moreover, the trial court has adopted a novel method. It has just permitted the petitioners to join the proceedings without realising that they have neither been permitted to file written statement nor permitted to cross examine the plaintiff's witnesses. The trial court has not held that the petitioners have failed to make out a case for setting aside ex-parte proceedings. While deciding such applications, the court is required to adopt a pragmatic approach which would advance the cause of justice.

11. Keeping in view the aforesaid facts, the impugned order is set aside. The ex-parte proceedings against the petitioners shall stand set aside.



CR-688-2020(O&M)

They shall be permitted to file their written statement within a period of three weeks from today and thereafter, they can participate in the further proceedings.

12. The revision petition stands allowed.

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

(ANIL KSHETARPAL)
JUDGE

20.03. 2025

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No