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

**CR-2188-2015 (O&M)
Date of decision : 23.03.2022**

M/s Paras Ram Milkhi RamPetitioner

versus

Sudarshan Tea. Pvt. Ltd. and AnotherRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vijay Sharma, Advocate for the petitioner.

Mr. Raman Mohinder Sharma, Advocate for respondent No.1.

ALKA SARIN, J.

Heard through video conferencing.

The present petition has been filed under Article 227 of the Constitution of India challenging order dated 08.01.2015 passed by the Additional District Judge, Sangrur and 27.04.2011 passed by the Additional Civil Judge (Sr. Division), Moonak as well as the ex-parte judgment and decree dated 11.06.2015 passed by the Additional Civil Judge (Sr. Division), Sunam.

Brief facts relevant to the present *lis* are that on 04.02.2004 the plaintiff-respondents herein filed a suit for recovery Rs.1,32,513/- against the defendant-petitioners. Vide order dated 05.02.2004, the Trial Court issued notice to the defendants-petitioners for 04.03.2004 on filing of registered cover. Summons were issued through registered post on 06.02.2004 for 04.03.2004. On 04.03.2004 the registered cover sent to the

defendant-petitioners No.2 to 5 were received back with the report of refusal and hence they were proceeded against ex-parte. Since acknowledgment due qua defendant-petitioner No.1, namely, Satpal Mittal was not received, hence fresh notice was directed for 17.04.2004. On 17.04.2004 the acknowledgment due was received back with a report of refusal and in such circumstances the Court, having been satisfied that the defendant-petitioner No.1 could not be served through ordinary process, directed publication in the daily Chardikalan for 15.05.2004. On 15.05.2004 the case was adjourned to 18.05.2004 and on 18.05.2004 the case was adjourned to 24.07.2004 as publication had not been received back. Order dated 24.07.2004 records that *the publication had duly been published in the Daily Chardikalan in its Edition dated 13.06.2004 and despite the matter being called several times none had appearance on behalf of defendant No.1. As such defendant No.1 was proceeded against ex-parte.* On 11.06.2005 the suit was decreed ex-parte.

Thereafter, an execution was filed at Moonak/Sunam, District Sangrur on 30.07.2005 which was transferred to District Patiala as the defendant-petitioners were residents of Patiala. It is the case set up that the Bailiff of the Court of Patiala came for attachment of the residential house of Milkhi Ram on 04.12.2007 and that is when the defendant-petitioners came to know of the decree passed by the Court at Moonak. On 02.01.2008 the defendant-petitioners filed an application for setting aside the ex-parte judgment and decree before the Trial Court at Moonak by pleading that they had not received the summons from the Court at Moonak and that the defendant-petitioners have never been served in the suit as also taking the defence that the amount had been received against receipt by Vinod Kumar

Jain, Director of the plaintiff-respondent. However, the receipt had been misplaced. On 27.04.2011 the Trial Court dismissed the application for setting aside the ex-parte judgment and decree. Against the said order an appeal was preferred which also came to be dismissed on 08.01.2005. Aggrieved by the said two orders the present revision petition has been filed.

Learned counsel for the defendant-petitioners would contend that as per the provisions of Order 5 and Rules 9(4) and 19 of CPC, the defendant-petitioners, who live outside the territorial jurisdiction of the Court, could not be served by way registered post. To buttress his argument, learned counsel for the defendant-petitioners has relied upon a judgment of the Himachal Pradesh High Court passed in *M/s Aar Kay Traders Vs. M/s Satish Electronics [2008(56) RCR (Civil) 840]*. Learned counsel for the defendant-petitioners would further contend that the provisions of law qua service have been given a total go-by in the present case inasmuch since the summons were received back not served or having been refused, Order 5 Rule 17 of CPC would come into play and affixation ought to have ordered which was not done in the present case. It is further the contention of the learned counsel that neither the provisions of Order 5 Rule 17 CPC nor the provisions of Order 5 Rule 18 CPC have been complied with in the present case. The learned counsel has further argued that there was no circulation of the newspaper *Chardikalan* in the locality in which the publication is said to have been made. It is further submitted that all principles of natural justice have been given a go-by and the defendant-petitioners have been condemned unheard. In support of his arguments the learned counsel has referred to the judgments of this Court in *Pritam Singh Vs. Raj Kumar [2013 (4) RCR (Civil) 126]*; *Sham Singh Vs. Madan Singh [2015 (1) RCR (Civil) 504]*;

Joga Singh Vs. Jaswinder Singh [2013 (23) RCR (Civil) 272] and Shri Bhagwan Vs. Satinder Kumar [2013 (36) RCR (Civil) 623].

The learned counsel for the plaintiff-respondent No.1 has contended that the defendant-petitioners in the present case were duly served as is apparent from the record. The defendant-petitioners refused to accept the summons and were therefore rightly proceeded against ex-parte. Since defendant-petitioner No.1, namely, Satpal could not be served initially, however, subsequently he was also served and despite that, publication was also ordered to be done in the newspaper *Chardikalan*. The learned counsel has further referred to the statement of AW-1 Tarsem Chand, defendant-petitioner No.3 to contend that in his cross-examination Tarsem Chand had categorically admitted that the newspaper *Chardikalan* was in circulation in Patiala but he had no knowledge regarding the publication. It is further come in the cross-examination of AW-1 that all the brothers were residing together. The learned counsel for the plaintiff-respondent has further contended that though in the application as well as in the present petition it has been stated that the defendant-petitioners came to know that the ex-parte decree has been passed against them when the Bailiff came for attachment of their property, however, in his cross-examination AW-1 has stated that on 04.12.2007 a person named Malkit Singh had informed him that a decree had been passed against him. Learned counsel for the respondent has further relied upon the judgment of the Supreme Court in *Parimal Vs. Veena @ Bharti [2011 (3) SCC 545]* to contend that once service has been affected and then there is a presumption of service of letter sent under registered cover and if it comes back with a postal endorsement that the addressee has refused to accept the same, though rebuttable, would be considered as duly

served. It has further been contended that the burden to rebut the presumption lies on the party challenging the factum of service and in the present case the defendant-petitioners have woefully failed to discharge the said burden. Learned counsel has further referred to para 23 of the judgment of Parimal (*supra*) to contend that in case the matter does not fall within the four corners of Order 9 Rule 13 CPC, the Court has no jurisdiction to set aside an ex-parte decree.

Heard.

In the present case, the suit was filed at Sunam, District Sangrur and all the defendants were residing at Patiala as per the addresses mentioned in the plaint. The defendant-petitioners were, thus, residing outside the jurisdiction of the Court where the suit was instituted. The summons to the defendant-petitioners were sent to Patiala, District Patiala by registered post acknowledgement due by the Trial Court at Sunam, District Sangrur where the suit was instituted and were received back with reports of refusal. In the present case this Court has to examine if there was proper service upon the defendant-petitioners.

Order 5 Rule 9 CPC deals with service of defendants residing both within and without the jurisdiction of the Court and reads as under :

Order 5 Rules 9 CPC reads as under :

“9. Delivery of summons by Court - (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are

approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in Sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in Sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in Sub-rule (3) (except by registered post acknowledgment due), the provisions of Rule 21 shall not apply.

(5) When an acknowledgement or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorized by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in Sub-rule (3) when tendered or transmitted to him, the Court issuing the summons

shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, prepaid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgement having been lost or mislaid, or for any other reason has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of Sub-rule (1).”

Under Order 5 Rule 9-A CPC, the Court may, in addition to the service of summons under Rule 9, on an application by the plaintiff, deliver summons to the plaintiff for serving on the defendant. Such summons have to be served personally upon the defendant by the plaintiff or on his behalf. The Rule makes no distinction between a defendant within or without the jurisdiction of the Court which issues the summons.

Order 5 Rule 21 CPC (as amended by Act No.46 of 1999) pertains to service of summons where the defendant resides within the jurisdiction of another Court and reads as under:

“21. Service of summons where defendant resides within jurisdiction of another Court - A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.”

It may be mentioned here that for the States of Punjab, Haryana

and UT Chandigarh Order 5 Rule 21 CPC, as existing prior to the amended Rule 21 reproduced above, was substituted by the following Rule 21 :

“A summons may be sent by the Court by which it is issued, whether within or without the State, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

Provided that where the defendant resides within the State at a place not exceeding sixteen kilometers from the place where the Court is situate, a summons may be delivered or sent by the Court to one of its officers to be served by him or one of his subordinates.”

Thus, where a defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons have to be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court. Further, the summons can be sent by registered post acknowledgment due or by speed post or by an approved courier service or by any other means of transmission of documents including fax, electronic mail service as provided by the rules made by the High Court.

However, where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, the summons to such a defendant can be sent directly by the Court, where the suit is instituted, by speed post, approved courier service or by any other means of transmission of documents including fax, electronic mail service as provided by the rules made by the High Court. For service by such means on a defendant residing outside the jurisdiction of the Court, the provisions of Order 5 Rule 21 shall not apply. Registered post acknowledgement due is specifically excluded in

Order 5 Rule 9(4) CPC and, therefore, for service by registered post acknowledgement due on a defendant residing outside the jurisdiction of the Court, the provisions of Order 5 Rule 21 shall apply.

Order 5 Rule 21 CPC makes it clear such that summons ordered to be served by registered post acknowledgement due on a defendant residing outside the jurisdiction of the Court would have to be sent to the Court having jurisdiction where the defendant resides. Under Order 5 Rule 23 CPC, the Court to which the summons are sent under Rule 21 shall proceed as if it had been issued by such Court. Order 5 Rule 23 CPC reads as under :

“Duty of Court to which summons is sent - The Court to which a summons is sent under Rule 21 or Rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.”

These provisions make it clear that where the defendant resides outside the jurisdiction of the Court in which the suit is instituted and the Court directs that summons on such a defendant be served by registered post acknowledgement due, such summons have to be first sent to the Court having jurisdiction where the defendant resides and that Court would thereupon proceed to serve the defendant as if the summons were issued by that Court. Summons by registered post acknowledgement due cannot directly be sent by the Court where the suit is instituted to a defendant residing outside its jurisdiction. The decision by the Himachal Pradesh High Court in Aar Kay Traders case (*supra*) is to the same effect.

In the present case, admittedly, the defendant-petitioners were residing outside the territorial jurisdiction of the Court where the suit was

instituted. That being so, service sought to be effected upon them by way of registered post acknowledgement due directly by the Court where the suit was instituted cannot be deemed to be proper service and the procedure adopted by the Trial Court was contrary to that laid down in Order 5 Rules 9 and 21 CPC.

In view of the discussion above, the present petition deserves to succeed and is consequently allowed. The impugned order dated 08.01.2015 (Annexure P-6) passed by the Additional District Judge, Sangrur and the impugned order dated 27.04.2011 (Annexure P-5) passed by the Additional Civil Judge (Sr. Division), Moonak as well as the impugned ex-parte judgment and decree dated 11.06.2015 (Annexure P-2) passed by the Additional Civil Judge (Sr. Division), Sunam are set aside. Pending applications, if any, also stand disposed off.

Parties through their counsel to appear before the Trial Court in Sunam on 04.04.2022 for further proceedings in the suit. Records summoned vide order dated 10.11.2017 be sent back to the Courts concerned.

March 23, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No