

**Rajan Mehra Vs. Geetanjali Mehra**

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**SooperKanoon Citation :** [sooperkanoon.com/1183407](http://sooperkanoon.com/1183407)

**Court :** Delhi

**Decided On :** Jul-29-2016

**Judge :** S. Ravindra Bhat & The Honourable Ms. Justice Deepa Sharma

**Appeal No. :** MAT. APP. (F.C.) No. 43 of 2016 & CM APPL. No. 12073 of 2016

**Appellant :** Rajan Mehra

**Respondent :** Geetanjali Mehra

**Judgement :**

**Deepa Sharma, J.**

1. This is a husband's appeal against an order dated 08.03.2016 whereby his application under Order IX Rule 13 CPC for setting aside the ex-parte order dated 13.12.2012 was dismissed. The order dated 13.12.2012 was passed on the application of respondent/wife under Section 125 Cr PC. The maintenance was fixed at the rate of Rs. 15,000/- per month from the date of petition and the litigation expenses of Rs. 33,000/- were also granted. The main ground of challenge in his application was that he was not aware of the pendency of the proceedings under 125 Cr PC as he was never served of the said application. His further contention was that a fraud had been played upon him. The plea before the trial court was that there was no vakalatnama of the counsel who had allegedly appeared before the court and the whole proceeding was a fraud.

That he came to know of this order only on 01.11.2013 when the file was inspected. The necessity of inspecting the file arose as he was informed by his relative at Chandigarh that warrants had been issued against him by a Rohini Court and thereafter he engaged a counsel who inspected the file.

2. It is submitted that the appellant was never served of the proceedings. The notice was initially issued at the Rajpura Road address, upon his father. The respondent/wife had contended that the notice of the petition was issued at Rajpura Road address where it was served upon his father. Sh. Ashok Kumar, Advocate appeared on behalf of the respondent s father in the court on 23.09.2011 and furnished the correct latest address of the respondent. Notices were issued by the court at that address and he was also ordered to be served by affixation by order dated 19.12.2011 through District Judge, Chandigarh. When the appellant did not appear, the court proposed to proceed under Order 5 Rule 20 CPC and the order of publication was made on 07.03.2012 in Dainik Tribune Delhi and Chandigarh Editions and it was also ordered that the respondent be also served by a way of affixation. However, on 24.05.2012, one counsel appeared on behalf of the husband and sought adjournment on the ground that the matter was likely to be settled. At his request, the court had adjourned the case for 17.07.2012. However, on that date again a joint request for adjournment was made for settlement and the matter was further adjourned to 29.08.2012. On that date again the husband did not appear and on request, he was exempted on medical grounds and matter was further adjourned. It was only on 03.09.2012, that on the statement of his counsel that he had no instructions from the husband, the court proceeded ex-parte. Thereafter, the case was adjourned for several dates but the husband did not appear.

3. The Family Court after hearing the parties and considering the materials on record concluded that the appellant had sufficient information and knowledge about pendency of the proceedings before it, that he had intentionally not attended the court and that he had failed to give any reasonable grounds for his non-appearance. He has based his findings on the following facts:-

a) The appellant was having the knowledge of pendency of the case which fact was evident from the service of summons at his Rajpura Road address, in response to which, on 23.09.2011, Mr. Ashok Kumar, Advocate had attended the court, on the instructions of the family members of the respondent and furnished the latest address of the respondent. The application of Mr. Ashok Kumar, Advocate furnishing the address is also on record.

b) The proceedings dated 23.09.2011 corroborated the report of the process server dated 26.08.2011 and 20.09.2011 which recorded that the respondent had shifted to house no. 6, Khuda Alisher, Chandigarh.

c) These facts conclusively proved that appellant was served at his given address where his family members resided who never claimed that they had disowned the respondent.

d) The notices sent at Chandigarh address were received back unserved.

e) The submissions made by counsel appearing on behalf of the respondent on 24.05.2012 and on subsequent date till 03.09.2012 that settlement talks were going on between the parties was corroborated from the order dated 21.08.2012 passed by High Court of Punjab and Haryana in Cr. No. Misc. 6400/2011. It recorded settlement efforts between the parties before the Permanent Lok Adalat and Mediation Centre of that court.

f) There was no averment in the application that the said counsel had been appearing in the court on behalf of respondent without his instruction or that his presence was manipulated by petitioner.

g) The court also noticed that the application was time-barred since the order proceeding the appellant ex-parte was passed on 03.09.2012 in the presence of his counsel.

4. The Family Court findings are challenged before this court by the present appeal on the ground that the court had acted in haste and had failed to appreciate the basic fact that the main intention of the respondent was to harass the appellant and extract more money from him and that he has a good prima

facie case which he would have presented before the court had he been served of the petition. It is further contended that the respondent is a liar. It is submitted that a fictitious lawyer had given the address of Chandigarh and that the husband/appellant had no knowledge of the case and that no vakalatnama had been filed by any Advocate on his behalf which shows that the lawyer was appointed by the respondent and has prayed that the ex-parte order be set aside and he be given opportunity to contest the application under Section 125 CrpC.

5. It is also argued that the impugned order is contrary to the material on record and that the Court has failed to appreciate that the respondent succeeded in presenting sufficient cause in his favour for setting aside the ex-parte order. Learned counsel for the respondent relied on the decisions in Ramlal and Ors. vs. Rewa Coalfields Ltd., AIR 1962 SC 361; Sarpanch, Lonand Grampanchayat vs. Ramgiri Gosavi and Anr., AIR 1968 SC 222; Surinder Singh Sibia vs. Vijay Kumar Sood, AIR 1992 SC 1540; and Oriental Aroma Chemical Industries Limited vs. Gujarat Industrial Development Corporation and Another, (2010) 5 SCC 459.

6. In the cited cases, the Courts observed that sufficient cause means that the party had not acted in a negligent manner. That in turn depends on the facts and circumstances of the case where party has not acted bona fidely and diligently or had remained inactive, in such cases, it cannot be said that the parties had sufficient cause. To determine whether a party that approaches the court has sufficient cause, the facts and circumstances of each case should be examined to enable the court concerned to exercise its discretion. The appellant has also relied on the findings in cases of Arjun Singh vs. Mohindra Kumar and Ors., AIR 1964 SC 993; Brij Indar Singh vs. Lala Kanshi Ram and Ors., AIR 1917 P.C. 156; Manindra Land and Building Corporation Ltd. vs. Bhutnath Banerjee and Ors., AIR 1964 SC 1336; and Mata Din vs. A. Narayanan, AIR 1970 SC 1953, wherein the difference between sufficient cause and good cause was explained. It is further contended that the Court must bear in mind the object of delivering substantial justice to all the parties while deciding whether party had a sufficient cause or not and the technicalities of law should not prevent the court from denying substantial justice and has relied on State of Bihar and Ors. vs. Kameshwar Prasad Singh and Anr., AIR 2000 SC 2306; Madanlal vs. Shyamlal, AIR 2002 SC 100; Davinder Pal

Sehgal and Anr. vs. M/s Pratap Steel Rolling Mills (P) Ltd. and Ors., AIR 2002 SC 451; Ram Nath Sao alias Ram Nath Sao and Ors. v. Gobardhan Sao and Ors., AIR 2002 SC 1201; Kaushalya Devi vs. Prem Chand and Anr. (2005) 10 SCC 127.

7. It is contended that the notices were never served upon the respondent and the presumption of service is rebuttable. The appellant has placed reliance on Dr. Sunil Kumar Sambhudayal Gupta and Ors. vs. State of Maharashtra, JT 2010 (12) SC 287 and Gujarat Electricity Board and Anr. vs. Atmaram Sungomal Poshani, AIR 1989 SC 1433.

8. On the other hand, learned counsel for the respondent argued that the facts and circumstances show that the appellant was very well aware of the pendency of the proceedings under Section 125 Cr PC. The parties had last resided at Rajpura Road-Civil Lines where the notices were served by the Court and the various reports show that the respondent had intentionally avoided to receive the summons and his family members, including his father and grandmother refused to take the summons and informed the process server that he was staying at Chandigarh. They had also given the appellant's Chandigarh address. The appellant's contention therefore, that some fictitious lawyer had attended on behalf of his family members and furnished wrong address, is without basis. Besides, the court also issued summons at the Chandigarh address and a lawyer had attended court proceedings on the appellant's behalf and made submissions which the court found to be correct and supported by the order of the High Court of Punjab and Haryana.

9. It is submitted that the facts and circumstances therefore clearly shows that the appellant was duly served and was aware of pendency of the proceedings before the family court and he had intentionally and deliberately not attended the proceedings.

10. We have given our due consideration to the rival contentions and perused the record. The record clearly shows that the parties had last resided at Rajpura Road, Civil Lines and the processes were sent to that address, the appellant's family members refused to receive the notice. They informed the process server that respondent had shifted to Chandigarh. Not only this, one lawyer, Mr. Ashok

Kumar, had appeared in the court on behalf of the father of the appellant and moved an application in which he gave the Chandigarh address of the appellant. After repeated summons were sent to Chandigarh's address, an Advocate attended the court on behalf of appellant to inform the court about certain settlement proceedings going on in Chandigarh.

11. In view of these facts of the case, it cannot be said that the petitioner was unaware of the pendency of the proceedings under Section 125 Cr PC. The purpose of the service is to inform the opposite party of the proceedings taken up in court by a party against him. If a party is sufficiently aware of pendency of such proceedings in a court of law against him, it is his duty to be diligent and careful and take steps to attend those proceedings. If he does not do so and subsequently contests that he was unaware of such proceedings, the burden is upon him to prove such fact. Here in this case, the appellant's family members, were aware of the proceedings pending before this court. They first informed the process server that he had shifted to Chandigarh and also gave the address and then through an Advocate moved an application giving the same address of the respondent of Chandigarh. It is not that the appellant was disowned by his parents or was not on speaking terms or that they were inimical towards him. The appellant nowhere says that his family members had reasons to not inform him about the visit of process server with summons to him at their address. Also, the appellant's contention is that the address given by the Advocate was a fictitious address. He thereby tried to show that he was not living in Chandigarh at the given address. It was for him then to show, if he was not living at the Delhi address and also not living at Chandigarh, what exactly was the place he resided in. It is also a fact that during this period he was participating in conciliation proceedings under the order of High Court of Punjab and Haryana. Furtherance, the appellant offered to settle the disputes with an amount of Rs. 13 lakhs to the respondent, during bail proceedings before the Punjab and Haryana High Court. He clearly was served through his father, the adult male member of his family at the address where he last resided with respondent, by affixation at his Chandigarh address. As a result, an Advocate marked his attendance on his behalf. In the light of these facts, we find no infirmity in the impugned order. The appeal has no merit. The same is therefore dismissed.

