

Rajinder Singh Vs. Gurmail Singh

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Court : Punjab and Haryana

Decided On : Aug-01-2002

Reported in : (2003)133PLR428

Judge : M.M. Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 5, Rule 19A - Order 9, Rule 13; Eviction Act, 1872 - Sections 80

Appeal No. : Civil Revision No. 6683 of 2001

Appellant : Rajinder Singh

Respondent : Gurmail Singh

Advocate for Def. : Surinder Sharma, Adv.

Advocate for Pet/Ap. : Hardip Singh, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This revision petition filed under Section 115 of the Code of Civil Procedure, 1908 (for brevity 'the Code') is directed against the order dated 3.8.2001 passed by the Additional District Judge, Rupnagar dismissing the appeal of the defendant-

petitioner against the order dated 2.8.1999. In the order dated 2.8.1999, the Civil Judge (Senior Division) Rupnagar has declined the application of the defendant-petitioner for setting aside the ex-parte judgment and decree dated 23.12.1996 passed in Civil Suit No. 138/24.5.1996.

2. Brief facts of the case are that the plaintiff-respondent filed Civil Suit No. 138 on 24.5.1996 against the defendant-petitioner for a recovery of sum of Rs. 30,250/-. The basis of the suit was a promissory note which was executed by the defendant-petitioner. The suit was decreed ex-parte on 23.12.1996 in favour of the plaintiff-respondent.

3. An application was filed by the defendant-petitioner on 28.9.1998 alleging that he was never served in the suit and for the first time he came to know about the passing of the decree dated 23.12.1996 on 24.8.1998. Thereafter, he filed an application for obtaining certified copy of the decree on 31.8.1998 and then the application was filed. The Civil Judge issued notice of the application and on the basis of the pleadings of the parties framed two issues namely whether there are sufficient grounds for setting aside the ex-parte decree dated 23.12.1996 passed in Civil Suit No. 138 of 24.5.1996. The onus to prove the issue was put on the defendant-petitioner. The second issue was whether the application was filed within time. The learned Civil Judge recorded the finding that the defendant-petitioner was duly served with the summons and in token thereof he had signed the summons. It was further held that he was also supplied with a copy of the plaint. On the second issue, the finding recorded by the Civil Judge is that the application was belated and was filed beyond a period of 30 days which is provided for setting aside the ex-parte decree. Feeling aggrieved, the petitioner challenged the order dated 2.8.1999 passed by the Civil Judge before the District Judge who also affirmed, the view taken by the Civil Judge by observing as under;

'The plaintiff/respondent has filed the suit for the recovery of Rs. 30,250/- against the appellant on 24.5.1996. Notice of the said suit was issued to the appellant vide Ex.A.1. Ashok Kumar process server has stated that he has completed the service. Though on the summons it is not mentioned that copy of the plaint is attached with the summons, but at point mark B on Ex.A1, the appellant has made

endorsement regarding receipt of copy of plaint alongwith summons and put his signatures. In the application he has denied his signatures and pleaded that his signatures have been fabricated by plaintiff/respondent but he has failed to examine any expert witness to show that his signatures have been fabricated or that he has not signed the summons and no service was effected upon him. Even in the application for setting aside the exparte judgment and decree, the appellant has admitted that he has come to know about the exparte judgment and decree only on 24.8.1998, but he has made an application for obtaining the certified copies of judgment and decree on 3.8.1998 which was delivered to him on 23.9.1998. From the perusal of Ex.A1, it is clear that appellant was having the knowledge of the filing of the suit since 3.6.1996 when the service was effected upon him but he intentionally did not appear in suit and has also not filed the application for setting aside the exparte judgment and decree within time. When the appellant has put in signatures and received the copy of plaint, there is no necessity to obtain the signatures of any witness for identification of defendant/appellant. The appellant is denying his signatures on the summons, so it was for the defendant/appellant to prove that he has not put his signature on Ex.A1 and it was fabricated by plaintiff/respondent, but he has failed to do so. As such, the impugned order passed by the learned trial Court is correct and has to be upheld.'

4. Learned counsel for the petitioner, Shri Hardip Singh has argued that onus to prove signature on the summons should have been placed on the plaintiff-responent and the trial Court as well as the appellate Court committed a grave error in law byplacing the onus on the defendant-petitioner. He has further urged that the summons should have been issued by registered AD post as is provided by the provisions of Order 5 Rule 19A of the Code (as the provision stood at that time). His last submission is that the summons did not accompany the copy of the plaint.

5. Shri Surinder Sharma, learned counsel for the plaintiff-responent has pointed out that there are categorical findings recorded by both the Courts below that the plaint was received by the defendant-petitioner and in token thereof he has signed the summons. He has further urged that the summons by registered AD post may be considered as an irregularity once it is shown that the defendant-petitioner was

served. Therefore, he prays that the revision petition may be dismissed.

6. I have thoughtfully considered the rival contentions raised by the learned counsel for the parties and am of the view that this revision petition lacks merit and is thus liable to be dismissed. The first submission of the learned counsel for the petitioner that the onus should have been placed on the plaintiff-respondent has to be rejected because under Section 80 of the Indian Evidence Act, 1872 there is a presumption of truth which is attached to the documents produced as record of evidence. Once there is a presumption of truth in favour of the official document then the heavy onus has to be discharged by a party who urges the record not to be genuine. Therefore, I do not find any substance in the first submission of the learned counsel. The second submission of the learned counsel that the service should have been effected by sending registered AD notices alongwith summons would also not require any serious consideration in view of the fact that the defendant- petitioner has been duly served and his signatures on the summons have also been proved. Therefore, in the facts and circumstances it cannot be claimed that he was also entitled to be served with registered AD notices. In such circumstances, the provisions of Order 5 Rule 19 A of the Code would be considered to be directory because the basic object of adding Order 5 Rule 19A of the Code was to ensure that delay in effecting service is avoided. In cases where the Court consider it unnecessary to issue summons by Regd. AD post it is not required to do so. The last submission of the learned counsel that the plaint did not accompany the summons is not borne out from the finding of fact because it is categorically held by both the Courts below that the plaint was supplied to the defendant-petitioner and in token thereof he has signed¹ the summons.

7. In cases where the suit for recovery based on promissory note is filed, it is almost certain that the suit would be decreed and there is a general tendency on the part of the defendant to avoid appearance. This case also presents an illustration of that nature. The possibility of intentional avoidance of service by the defendant-petitioner cannot be ruled out. Moreover, the defendant-petitioner still would have the remedy to challenge the judgment and decree dated 23.11.1996 by filing an appeal which he does not appear to have filed for the reasons best known to him. Be that as it may, the revision petition lacks merit and is thus liable

to be dismissed.

8. For the reasons recorded above, this petition fails and the same is dismissed.

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