
(1969) 08 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 744 of 1968

Bhagwan Gold and Silver Store, Rewari	APPELLANT
Vs	
Hissar Iron and Mechanical Works	RESPONDENT

Date of Decision : 14-08-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 10, Order 5 Rule 20, Order 5 Rule 20A, 115

Citation : AIR 1970 P&H 393

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : P.S. Jain and V.M. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—This is a rule at the instance of the judgment-debtor directed against the appellate order of the Additional District Judge, Hissar, who, on 6th of February, 1968, declined to set aside an ex parte decree passed in favour of the plaintiff-respondent and against the petitioner for a sum of Rs. 669/30 on 5th of March, 1965.

2. The suit was filed by the plaintiff-respondent, Hissar Iron and Mechanical Works against Bhagwan Gold and Silver Store, Rewari, on 15th September, 1964, for recovery of Rs. 669-30. The first order of the Court was passed on 16th of September, 1964 for summoning of the defendant for 6th of November, 1964. On 6th of November, 1964, the summons which had been issued to the defendant had not been returned and the Court ordered that a registered cover should be sent to the defendant for 10th December, 1964. On the registered letter, the defendant is stated to have refused to accept it on 11, December, 1964. It has to be observed that the summons had been sent in the first instance to the defendant for appearance on 6th of November 1964. The Court then directed a proclamation to be issued under Order 5, R, 20 of the CPC in "Jaggat Weekly" for 18th of February, 1965. The notice appeared in this paper and the

defendant did not turn up on the date of hearing. An ex parte decree was accordingly passed against the petitioner on 5th of March, 1965.

3. In the application filed for setting aside the ex parte decree the only point taken up was that the defendant was not a subscriber of "Jaggat Weekly." Both the Courts below rightly held that this objection was devoid of any force and substance. The application for restoration of the suit and setting aside of the ex parte decree was accordingly dismissed. The Additional District Judge, Hissar, having upheld the order of dismissal in appeal on 6th of February, 1968, the defendant judgment-debtor has come to this Court in revision.

4. Mr. Jain, the learned counsel for the petitioner, no longer subscribes to the objection which was taken by the judgment-debtor before the Courts below. He now submits that no basis existed for an order for substituted services to be effected on the defendant. His argument, in the first instance, is based on the amendment made by the Punjab High Court in Rule 10 of Order 5 of the CPC which says that:--

"Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court."

A proviso was added in the amendment introduced" in respect of Punjab on 24th of November, 1927, this being:--

""Provided that in any case if the plaintiff so wishes, the Court may serve the summons in the first instance by registered post (acknowledgment due) instead of in the mode of service laid down in this rule."

Mr. Jain submits that in the first instance summons was issued for the service of the defendant and no report had been received when an order for service by registered post was made. It is contended that the proviso only empowers the Court to issue summons by registered post in the first instance and not after another mode for service has been adopted. There is authority in support of this view of Chopra, J. in M.G. Dua Vs. Balli Mal Nawal Kishore, .

5. The second argument on which Mr. Jain supports this petition is based on the provisions of Rule 20-A of Order 5 of the Code of Civil Procedure, Under this rule:--

"(1) Where, for any reason whatsoever, the summons is returned unserved, the Court may, either in lieu of, or in addition to, the manner provided for service of summons in the foregoing rules, direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept service at the place where the defendant or his agent ordinarily resides or carries on business or personally works for gain.

(2)"

It has been ruled by the learned Chief Justice of this Court in In Re: Saradamma

and Others, , that Order 5, Rule 20-A has no application where the summons was never returned unserved to the Court when the order for substituted service was made. The trial Court, according to the principle laid down in this authority, has no power to have recourse to substituted method of service until the prerequisite mentioned in Rule 20-(A)(i) has been complied with.

6. There is some force in the contentions raised by the learned counsel for the petitioner, but these objections were never raised either before the Court of first instance or the lower appellate Court. The petitioner is presumed to have had knowledge of the legal position and such a long delay in- making a point for the first time in revision before this Court cannot be countenanced. It would be recalled that the suit was instituted as far back as 1964 and it would be a denial of justice at this stage to order a remand of this case for a fresh decision on merits. It was the business of the defendant to have raised these points before the trial Court and the lower appellate Court as perhaps it may have been found necessary on an examination of objections to have evidence thereon of the parties.

7. In this view of the matter, I decline to interfere in revision which would stand dismissed, without any order as to costs.