

(1993) 01 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14443 of 1991

Nasib Kaur

APPELLANT

Vs

The Additional Director Consolidation and Holdings Punjab at
Jalandhar and Another

RESPONDENT

Date of Decision : 12-01-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Constitution of India, 1950 — Article 226, 227

Citation : (1993) 104 PLR 166

Hon'ble Judges : G.C. Garg, J; Amrit Lal Bahri, J

Bench : Division Bench

Advocate : G.S. Virk, M.C. Berry, D.A.G, for the Appellant; Jasbir Singh, for the Respondent

Judgement

A.L. Bahri and G.C. Garg, JJ.—This writ petition has been filed by Nasib Kaur against order dated July 10, 1991 vide which application filed by the petitioner was dismissed by Additional Director, Consolidation & Holdings Punjab at Jalandhar respondent No. 1 holding that he had no jurisdiction to review the ex parte order passed in the proceedings on 20-11-1990. The case of the petitioner is that she was never served with any notice of the proceedings pending before the Additional Director, Consolidation and Holdings, Punjab and that is why she had applied for setting aside the order proceedings ex parte against her. A copy of this application is Annexure P-3. Earlier, Additional Director, Consolidation & Holdings Punjab had passed an ex parte order Annexure P 1, withdrawing certain area from her and allotting other area.

2. This petition was contested by respondent No. 2 Pritam Singh in whose favour order was passed by the Additional Director, Consolidation and Holdings, Punjab. It is alleged that Nasib Kaur was duly served in the proceedings pending before the Additional Director.

3. We sent for the record, which has been produced. After perusal of the same

we find that earlier notice was sent in the case by Additional Director for 19-9-1990. The heading of the case was given as Pritam Singh v. Surjit Kaur and this notice was served on one Surjit Singh. It is stated that this Surjit Singh is infact husband of the present petitioner Nasib Kaur. The service of Surjit Singh on such a notice cannot be considered sufficient for the simple reason that name of the case was incorrectly recorded in the notice. In fact, the petition had been filed by Pritam Singh against Nasib Kaur. It was probably on that occasion that, the Additional Director issued fresh notice for 23-10-1990, giving correct name of the case. That notice is at page 14 of the record. The report on this notice is not a personal service or service on any family member of the present petitioner Nasib Kaur. The report of the Process Server shows that Nasib Kaur had refused to accept the service and a copy of the notice was pasted. Some Chowkidar of the village is reported to have signed this report. This report is un-dated. The chowkidar has also not put any date under his thumb impression. Therefore, prima facie, it cannot be said that on which date Process Server approached Nasib Kaur and she had refused to accept the same. When the petitioner had filed an application for setting aside the ex parte order on the allegations that she was not served with any notice and if this plea was denied, the evidence was required to be recorded by the Additional Director as to whether she had infact refused to accept service or not. Nothing of the kind was done by the Additional Director, rather he was of the view that if he would set aside the ex parte order on the ground of non-service or erroneous service, it would amount to review of the earlier order. This approach is entirely uncalled for and is not warranted by law. By setting aside the exparte order, it cannot be said that the order has been reviewed Review of order is always on merits, whereas in the case of ex parte order, the same is set aside on proof of non-service or improper service or for any other sufficient ground for non-appearance. Merits of the case are not to be gone into. Even there being no specific provision in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act the provision and principal of CPC relating of setting aside of exparte proceedings would be applicable.

4. For the reasons recorded above, this Writ petition is allowed. The impugned order Annexure P-2 dated July 10, 1991 is quashed. The matter is sent back to the Additional Director to decide the application Annexure P-3 on merits in accordance with law. The parties through their counsel are directed to appear before the Additional Director on 22-2-1993. The original record is returned to the State Counsel. There will be no order as to costs.