
(2006) 08 P&H CK 0509
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1045 of 2006

Tarlochan Singh

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7, 151

Citation : (2006) 4 CivCC 690 : (2006) 4 RCR(Civil) 648

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : Suresh Goyal, for the Appellant; Dhiraj Bali, for Mr. Chetan Mittal, for the Respondent

Judgement

Vinod K. Sharma, J.—The present revision has been filed against the order dated 15.2.2006 passed by the learned Additional Civil Judge (Sr.Division), Nabha, vide which the application moved by the petitioner under Order 9 Rule 7 read with Section 151 of the CPC has been rejected.

2. Learned Counsel for the petitioner contends that there was no personal service of the petitioner and that the publication was done in the Tribune, the paper which he does not read. Thereafter he came to know about the exparte order dated 28.4.2001 on 28.2.2006 when the property mortgaged with the bank was sought to be sold. The learned trial Court dismissed the application filed by the petitioner by observing that the case was seven years old and was pending since 1997, It recorded a finding that the defendant was evading service through ordinary process and accordingly he was ordered to be summoned through publication in the English Tribune which was an authorised newspaper in which the publication was made. It also took notice of the fact that the brother of the petitioner delivered the possession of the mortgaged plot to the authority and he signed on the notice about one year back and, therefore, the contention of the petitioner that he came to know about this case only on 28.2.2006 was not believed. The learned trial Court further held that the petitioner was rightly

served.

3. Learned Counsel for the petitioner contends that there has been no compliance of Order 5 Rule 17 and Order 5 Rule 19 of the CPC. However, the said provisions do not apply to the facts of the present case as it was nowhere recorded that the petitioner has refused to accept service nor there was any report that he was not found at the given address and once the provisions of Order 5 Rule 17 are not applicable, there was no occasion for the Court to examine the serving Officer under Order 5, Rule 19 as contended by the Learned Counsel for the petitioner. The Learned Counsel for the petitioner places reliance on the judgment of this Court in Harbans Singh v. Amrik Singh and another, 1997(2) CCC 309 wherein it has been held that before ordering substituted service it is mandatory on the part of the Court to record a finding that there are reasons to believe that the petitioner was evading service. He also placed reliance on the judgment of this Court in Yad Ram v. Capt. Ram Avtar, 2000 (1) CCC 346, wherein it has been held that before resorting to substituted service Court should normally issue summons in compliance with the provisions of Order 5 Rule 19-A CPC.

4. Learned Counsel for the petitioner further submits that even the Munadi was not done. It is appropriate to note down the order passed by the trial Court on 2.2.1999 which reads as under :-

"Summones on the defendant No.1 received back. Perusal of the file transpires that defendants are not be served in this case on the last month date for the want of correct address. However, the counsel for the plaintiff bank has filed duly sworn affidavit of the Manager of the plaintiff Bank. He has solemnly declared and affirmed that the defendants are residing at the given address, it is last known address, and services of the defendant cannot be made in ordinary process and they are liable to be summoned through substituted process of summoning. From the interlocutory order on the file and duly sworn affidavit Court is also satisfy that the services of the defendants is not possible in the ordinary process. Hence, the substituted process of summoning is pressed into service and defendant are ordered to be summoned through the Tribune, Chandigarh for 30.3.1999 on filing the P.F. and publication charges."

This order clearly shows that before ordering substituted service, the trial Court formed an opinion that it was not possible to serve the petitioner through ordinary means. Therefore, substituted service was ordered. As far as the service through Munadi is concerned, this is another form of substituted service and once the resort was made by publication, there was no necessity of ordering service by Munadi as contended by the Learned Counsel for the petitioner.

5. It may further be noticed that the possession of the property mortgaged with the bank was handed over by the brother of the petitioner about a year back.

In view of what has been stated above, there is no illegality or impropriety in the impugned order which may call for interference by this Court under Article 227 of

the Constitution of India.