

(2012) 09 P&H CK 0105

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 4199 of 2010 (O and M)

Balkar Singh

APPELLANT

Vs

Gurpreet Singh and Others

RESPONDENT

Date of Decision: Sept. 25, 2012**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 5 Rule 17, Order 5 Rule 20, Order 9 Rule 2

Hon'ble Judges: K. Kannan, J**Bench:** Single Bench**Advocate:** G.S. Gill, for the Appellant;

Judgement

K. Kannan, J.

There is no representation on behalf of the respondents but the petitioner is present and ready. I proceed to dispose of the case on the basis of arguments of the counsel for the petitioner and on the basis of the records having regard to the nature of the case which is set out below. 2. The civil revision is against the order dismissing the suit under Order 9 Rule 2 CPC for not taking steps to furnish the correct address of 1st defendant. The 1st defendant was reported to have gone abroad and not residing at the address where the summons had been taken. The counsel for the petitioner points out that he had given notice to his father who was the 3rd defendant in suit to furnish the correct address but the response from the 3rd defendant was that he did not know the address. The counsel argues that the Court, in such a situation, ought to have followed the procedure under Order 5 Rule 17 CPC.

2. I cannot see as to how Order 5 Rule 17 CPC could have been invoked by the Court. It would apply only in cases where a person, who is resident at a particular address, is not at the said address and there is no person who is an agent who could receive the notice on behalf of the party intended to be served. Where it was elicited by the bailiff that the party has gone abroad, he has not power to make a fixture, for, it is not the same thing as the party not being available at the address given in the

manner contemplated under Order 5 Rule 17. The plaintiff ought to have been diligent in applying to the Court seeking for permission for substituting service in the manner contemplated under Order 5 Rule 20 CPC. If he was still not served, the Court was within power to treat him as duly served and proceeded with the case further. I would find that the petitioner has brought to himself a position in the manner it was disposed, by his own conduct.

3. I would not, however, allow the suit to be thrown out at the threshold without an adjudication on merits. In suit for specific performance, the readiness and willingness on the part of the plaintiff to perform his part is paramount and being indeed a legislative mandate u/s 16(c), there ought to have been a diligent act on behalf of the plaintiff to conduct himself in such a way that he was never found wanting in the state of his readiness before, at and during the trial. The suit instituted in the year 2010 has been allowed to languish even without completion of service till date. In the interest of justice, it would require that the plaintiff is allowed to take appropriate steps to serve 1st defendant in the manner contemplated by law. This, however, will be subject to the condition that the petitioner shall deposit in Court the balance of amount payable under the sale agreement, namely, Rs. 13,48,500 - Rs. 6,50,000 = Rs. 6,98,500/- to the credit of the suit. The same shall be allowed to be withdrawn if the defendants accept the tender and express willingness to execute the sale deed. If not, the amount shall be invested in some bank deposit for a likely period of pendency of the suit for trial before the trial Court. This is manner of securing reparation for the laches on the part of the plaintiff who has failed to take appropriate steps to serve 1st defendant. The fresh notice will be issued by the Court at the address given by the petitioner only on proof of deposit as directed through this order, The petitioner will have only one opportunity to give the correct address and if the 1st defendant is not served at the address, the petitioner shall be given one more opportunity to take steps for substituted service, if adequate reasons are given in the manner contemplated by Civil Procedure Code. The impugned order is set aside and the civil revision is allowed on the above terms.