

(2000) 07 P&H CK 0201

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2062 of 1990

Hakam Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: July 12, 2000

Acts Referred:

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

Citation: (2001) 4 RCR(Civil) 112

Hon'ble Judges: Bakhshish Kaur, J

Bench: Single Bench

Advocate: S.S. Mahajan, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Bakhshish Kaur, J.

Is the trial Court justified in dismissing the suit of the plaintiff-petitioner qua defendant No. 3 in consequence of the failure of the plaintiff to pay/deposit publication charges ?

2. Vishwa Nath Chadha-defendant No. 3 was ordered to be summoned by the trial Court. Reading of the impugned order shows that several opportunities were granted to the plaintiff-petitioner for furnishing his correct address so that summons is issued. Ultimately, the case was adjourned enabling the plaintiff to file publication charges so that service could be effected by way of publication in the newspaper. Possibly, on account of failure of the plaintiff-petitioner to deposit the publication charges, the suit qua defendant No. 3 was dismissed under Order 9, Rule 2, CPC on 7.3.1990. The plaintiff moved an application for setting aside this order, but the same was dismissed. Hence, the revision petition.

3. I have heard Mr. S.S. Mahajan, learned counsel for the petitioner. None appeared on behalf of the respondent although the counsel was informed.

4. Shri S.S. Mahajan, learned counsel contended that persistent efforts were made by the petitioner to get the service effected upon defendants, but defendant No. 3 could not be served. It is admitted that there was default on the plaintiffs part in non-compliance of the order, but it is also stated that Vishwa Nath Chadha has no existing right or interest in the suit property because the petitioner has purchased the mortgagee rights after making full payment to him, therefore, defendant No. 3 is not interested in the proceedings pending before the trial Court,

5. It is immaterial whether defendant No. 3 was interested in prosecuting the case or not, but the fact remains that since he was arrayed as a defendant and the petitioner's case is that he purchased the mortgagee rights from him, therefore, service upon him was required to be effected. It is obvious from the impugned order that plaintiff could not furnish correct address initially despite four opportunities granted and finally defendant No. 3 was ordered to be served by substitute service. The reason for non-depositing the publication charges are evident from para 2 of the impugned order which reads as under :

"The present application has been filed by the plaintiff to set aside the said order dated 7.3.1990. It was alleged that the Clerk of the counsel for the plaintiff inadvertently gave wrong information to the plaintiff and munadi fee was deposited instead of the publication fee, that omission was not intentional and it was due to bona fide mistake of the Clerk; that there was no ulterior motive for not depositing the publication charges; that defendant No. 3 is a proforma defendant and he, therefore, prayed for the setting aside of the order dated 7.3.1990 and allowing him to deposit the publication fee afresh."

6. In view of the above, the interest of justice demand that one opportunity should be given to the petitioner to deposit the publication charges which the petitioner undertakes to deposit.

7. In view of the aforesaid, this revision petition is accepted. It shall be the responsibility of the petitioner to get the service effected upon defendant No. 3, either personally or through publication, as the case may be.

8. The parties through their counsel, are directed to appear before the trial Court on August 23, 2000.

9. The trial Court is also directed to expedite the trial as the case has been lingering on.

10. Revision allowed.