(2009) 02 P&H CK 0199

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 333 of 2006 (O and M)

Sukhbir		APPELLANT
	Vs	
Mateshwar Dayal		RESPONDENT

Date of Decision: Feb. 10, 2009

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

K. Kannan, J.
This is the civil revision by the judgment debtor whose application to set aside the ex parte decree passed on 30.10.1999 on the ground that he had not been served with suit summons was dismissed. The appeal to the appellate court was also dismissed.

2. The appellate authority, while rejecting the appeal, has considered the fact that the contention put forward by him that he had not been served with summons was not true. The decree holder had examined Court bailiff as RW-3 who has spoken to the fact that he actually effected the service and he can even identify the party in Court. The signature found in the document of summons and the signatures found in another admitted documents A-1 to A-11 had been subjected to appraisal by an expert who was examined as RW-5 and he has affirmed that the summons bore signature of the judgment debtor. The Rent controller himself has carried out a comparison of signatures and the appellate court has also observed Civil Revision No. 333 of 2006(O & M) -2 that the signatures found in the document with the naked eye tallied with the signature of the judgment debtor. The identity of the signatures found in the summons with the judgment debtor and the effect of the actual service of summons have been referred by the two Courts below on appreciation of oral and documentary evidence. The ex parte order of eviction was passed on 30.10.1999. For the last 10 years the case is only caught up in adjudication whether summons have been served or not.

3. The learned Counsel for the revision Petitioner relied on the judgment of this Court Badal Singh and Anr. v. Amar Kaur and Ors. 2005(2) PLR 789 that interests of justice would always require giving an opportunity to the parties to contest any case on merits and instead of closing the doors on technical grounds, Court should grant an opportunity to an aggrieved party subject only to payment of cost. The decision could be seen in factual context and cannot be said to lay down any general proposition that even in cases where a person who contends that he was not served with summons and was actually found by the Court to have been actually served could be given again an opportunity to contest the case on merits. The failure of absence on the particular day could also be not seen to be with any sufficient cause, especially even when the appellate Court had considered the fact that in an affidavit filed by the Petitioner in the appellate Court against a claim for fair rent, he had made reference about the pendency of an ejectment petition against him. In that affidavit, he had himself admitted that the rent control proceeding was still pending. Evidently, the Petitioner knew about the proceeding and still did not choose to appear before Court.

4. There is no error in the order passed by the Rent Controller or the appellate authority and there is no scope for interference in revision petition.

5. The revision petition is dismissed