

Before D. V. Sehgal, J.

SUKHDEV SINGH AND ANOTHER,—Petitioners.

versus

SANTOKH SINGH AND ANOTHER,—Respondents.

Civil Revision No. 2392 of 1986.

July 16, 1987.

Code of Civil Procedure (V of 1908)—Order V, Rules 19-A and 20, Order IX Rule second proviso—Court ordered issue of summons under registered cover—Service under registered cover—Whether mandatory—Service under registered cover not effected—Substituted service ordered—Such substituted service effected by proclamation and publication—Validity of such service.

Held, that had there been no specific order of the Court for issue of summons by registered post to the petitioners it might have been reasonable to conclude while adjudicating on the application under Order IX, rule 13 of the Code that the Court considered it unnecessary to issue summons for service on the petitioners by registered post and non-compliance with the mandatory provisions of rule 19-A *ibid* was an irregularity within the meaning of the second proviso to rule 13 of Order IX of the Code, but the Court having made specific order for issue of summons to the petitioners by registered post also non-compliance with this order by respondent No. 1 cannot be considered to be a mere irregularity. Since no valid service of summons was effected on the petitioner, the substituted service ordered by the Court under Order V, rule 20 of the Code, was not valid as there could not be any valid satisfaction of the Court that the defendant could not be served in the ordinary way. The substituted service by publication in Daily Ranjit, Patiala, was hardly of any help as this newspaper has little or no circulation in the district of Gurdaspur and particularly in the rural area where the petitioners reside. There is no satisfactory evidence on the record that *munadi* was effected in the village. There is nothing to disbelieve the version of the petitioners that they did not have the knowledge of the pendency of the suit or of the *ex-parte* decree. The application for setting aside the decree is to be considered within time.

(Paras 7 and 10)

Petition under Section 115 C.P.C. against the order of the Court of Shri A. C. Aggarwal, Additional District Judge, Gurdaspur, dated 9th May, 1986 affirming that of Shri R. N. Moudgil, PCS, Additional Senior Sub-Judge, Batala, dated 15th November, 1985, dismissing the application under Order 9 Rule 13 CPC for setting aside ex parte

decree dated 4th September, 1981 in suit 'Santokh Singh v. Jarnail Singh and others'. Leaving the parties to bear their own costs.

Raj Kumar Mahajan Advocate, for the Petitioner.

M. L. Sarin Sr. Advocate with H. L. Sarin, Miss Ritu Bahri, A. S. Grewal and Sukhdev Singh Advocates, for the Respondents.

JUDGMENT

D. V. Sehgal, J.

(1) This revision petition is directed against the judgment dated 9th May, 1986 passed by the learned Additional District Judge, Gurdaspur, in appeal whereby the order dated 15th November, 1985 passed by the learned Additional Senior Sub-Judge, Batala, was upheld and the appeal of the defendant-petitioners was dismissed.

(2) Santokh Singh respondent No. 1 filed a suit against the petitioners on 25th May, 1980 in the Court of the learned Sub-Judge, Batala, for specific performance of a contract against the petitioners. Summons of the suit was issued for service of the petitioners. The report on the process made by the Process server was that they had refused service. The learned Sub-Judge, therefore,—*vide* his order dated 16th October, 1980 directed substituted service to be effected on them through *munadi* and by publication of notice in the Daily Ranjit, Patiala, for 10th November, 1980. *Munadi* was duly effected and publication of the notice in the Daily Ranjit also took place in its issue dated 5th November, 1980. As no one appeared on behalf of the petitioners before the Court on 10th November, 1980, they were proceeded against *ex-parte*. The suit was posted for *ex-parte* evidence for 5th December, 1980 and ultimately on the basis of the *ex-parte* evidence, *ex-parte* decree dated 4th September, 1981 was passed in favour of respondent No. 1 and against the petitioners.

(3) The petitioners filed an application on 27th March, 1982 for setting aside the aforesaid *ex-parte* decree by stating that they had never been served with any summons either by the Process Server or through registered post and that they were never aware of the institution or pendency of the suit against them. It was, however, averred therein that they had got the knowledge of the

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ex-parte decree only a day prior to the filing of the application and as such the same was within time. The application was opposed by respondent No. 1 who pleaded that the petitioners had intentionally refused service. They were, therefore, validly served by substituted service. They had knowledge of the pendency of the suit and the *ex-parte* decree and that the application was barred by time.

(4) On the pleadings of the parties, the learned trial Court framed the following issues :—

- (1) Whether the application is within limitation ? OPA
- (2) Whether there is any valid ground for setting aside the *ex-parte* decree ? OPA.

Both these issues were decided against the petitioners and the learned trial Court dismissed their application by order dated 15th November, 1985 which was affirmed in appeal by the learned Additional District Judge,—*vide* his judgment under revision.

(5) I have heard the learned counsel for the parties and have also perused the record. The learned counsel for the petitioners has contended that,—*vide* its order dated 4th August, 1980 the learned Sub-Judge while directing issuance of summons of the suit to the petitioners had also ordered that summons should be served on them through registered post. A perusal of the file, however, shows that respondent No. 1 did not comply with the latter part of the order. He did not deposit the registered postal covers and summons were not issued to the petitioners by registered post acknowledgement due. He contends that Order V, rule 19-A, Code of Civil Procedure (for short 'the Code'), now contains a mandatory provision that in addition to and simultaneously with, the issue of summons in the ordinary manner the Court shall direct the summons to be served on the defendant by registered post acknowledgement due. He, therefore, submits that because of non-compliance of this mandatory provision, there was no valid service on the petitioners. This contention has been sought to be emphatically countered on behalf of respondent No. 1. It has been contended by his learned counsel that non-issuance of summons to the petitioners through registered post in pursuance of the order dated 4th August, 1981 and consequently non-compliance with rule 19-A *ibid* is at the most an irregularity in the

service of summons. The second proviso to rule 13 of Order IX, of the Code, now lays down that no Court shall set aside a decree passed *ex-parte* merely on the ground that there has been an irregularity in the service of summons if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim. In support of this submission he has placed reliance on *Risaldar Pakhar Singh and others v. Bhaiyan Singh and others*, (1). He further submits that since the petitioners had refused to accept service of summons issued to them in the ordinary manner, they are to be deemed to have knowledge of the proceedings. For this submission, he relied on *Har Charan Singh v. Shiv Rani and others*, (2). He further submits that substituted service on the petitioners by *Munadi* and by publication of notice in the *Daily Ranjit* is as effectual as if it had been made on the defendant personally as laid down in rule 20(2) of Order V of the Code.

(6) I have considered the rival contentions of the learned counsel and am of the view that this revision petition ought to be allowed. Rule 19-A in Order V of the First Schedule to the Code has been inserted by the Code of Civil Procedure (Amendment) Act, 1976. The objects and reasons for insertion of this rule as contained in clause 55 (iii) of the Joint Committee Report are as under :—

“The Committee are of the view that in order to establish that the summons has been duly served on the defendant, the simultaneous issue of summons for service by post should be done by registered post acknowledgment due. Sub-rule (1) of the proposed new rule 19-A has been amended accordingly.”

Proviso to rule 19-A (1) lays down that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary.

(7) Had there been no specific order of the Court for issue of summons by registered post to the petitioners, it might have been reasonable to conclude while adjudicating on the application under Order IX, rule 13 of the Code, that the Court considered it

(1) A.I.R. 1987 Punjab and Haryana 170.

(2) A.I.R. 1981 S.C. 1284.

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unnecessary to issue summons for service on the petitioners by registered post and non-compliance with the mandatory provision of rule 19-A *ibid* was an irregularity within the meaning of the second proviso to rule 13 of Order IX of the Code, but the Court having made specific order dated 4th August, 1980 for issue of summons to the petitioners by registered post also, non-compliance with this order by respondent No. 1 cannot be considered to be a mere irregularity.

(8) No doubt respondent No. 1 in support of the report of the Process Server recording refusal of service of summons by the petitioners produced the Process Server as R.W. 2 and also examined Hazara Singh Lambardar as R. W. 1, the witness to the report, besides his own statement, but the fact that respondent No. 1 did not deposit registered postal covers for service of the petitioners in accordance with rule 19-A *ibid* casts doubt on his bona fide and it appears that he was keen to obtain an *ex-parte* decree. It has been held in *Nasib Singh v. Jagdish Chand*, (3) that to put a safeguard against connivance between the plaintiff and the process server, the Legislature has made it incumbent under rule 19-A *ibid* to issue summons by registered post as well. Both the modes prescribed for service, i.e. ordinary process as also service by registered post, have to be resorted to.

(9) In my view, the ratio of *Risaldar Pakhar Singh's* case (*supra*), relied on by the learned counsel for respondent No. 1, has no application to the facts of the present case. In that case copy of the plaint was not accompanied by the summons sought to be served on the defendant. It was held that once the summons is served on the defendant he gains knowledge of the proceedings of the suit and if in response to the same he does not put in appearance he cannot take shelter under the plea that the copy of the plaint has not been supplied to him. On this ground alone an *ex-parte* decree is not to be set aside. The second proviso to rule 13 of Order IX of the Code shall be attracted in such a case as non-supply of the copy of the plaint would be an irregularity covered by the said proviso.

(10) Since no valid service of summons was effected on the petitioner, the substituted service ordered by the Court under Order

V, rule 20 of the Code, was not valid as there could not be any valid satisfaction of the Court that the defendant could not be served in the ordinary way. The substituted service by publication in the Daily Ranjit, Patiala, was hardly of any help as this newspaper has little or no circulation in the district of Gurdaspur and particularly in the rural area where the petitioners reside. There is no satisfactory evidence on the record that *munadi* was effected in the village. I have, therefore, no reason to disbelieve the version of the petitioners that they did not have the knowledge of the pendency of the suit or of the *ex-parte* decree. In these circumstances, the application is to be considered to be within time.

(11) Consequently, I allow this revision petition and set aside the order of the learned trial Court and the judgment of the learned Additional District Judge in appeal I allow the application under Order IX, rule 13 of the Code filed by the petitioners and set aside the *ex-parte* decree dated 4th September, 1981. There shall, however, be no order as to costs.

(12) The parties through their counsel are directed to appear before the learned trial Court on 17th August, 1987 when the petitioners shall put in appearance in the suit as defendants and on their entering upon defence further proceedings shall be taken by the trial Court in accordance with law.

S.C.K.

Before S. S. Kang and M. M. Panchhi, JJ.

BALWANT KAUR, —Petitioner.

versus

STATE OF PUNJAB AND ANOTHER, —Respondents.

Civil Writ Petition No. 5603 of 1986.

July 24, 1987.

Punjab Civil Services Rules, Volume II—Rule 6.17—Family pension—Withholding of such pension—Ground of withholding that some claim is pending against the deceased employee—Such withholding—Whether permissible.