

Chandi Lal Through His Attorney Saleem vs Shonki Lal on 22 January, 2025

Author: Vikas Bahl

Bench: Vikas Bahl

Neutral Citation No:=2025:PHHC:009146

CR-383-2025

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(129)

CR-383-2025

Date of decision: - 22.01.2025

Chandi Lal

....Petitioner

Versus

Shonki Lal

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Bhupinder Banga, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC for setting aside the impugned order dated 22.08.2023 passed by the Civil Judge (Junior Division), Garshankar in case CMA No.22 of 2021, CIS No.CM/24/2021 titled as 'Shonki Lal Vs. Chandi Lal', whereby trial Court had dismissed the application under Order 9 Rule 13 CPC filed by the petitioner. Challenge is also to the judgment and decree dated 14.01.2025 passed by the 1st Appellate Court, whereby the appeal filed by the petitioner has been dismissed.

2. Learned counsel for the petitioner has submitted that merely on account of presumption of due service, the petitioner had been proceeded against ex-parte. It is further submitted that the

petitioner be 1 of 6 Neutral Citation No:=2025:PHHC:009146 granted one opportunity to file the written statement and to contest the suit as in case the same is not allowed, the petitioner would suffer irreparable loss.

3. This Court has heard learned counsel for the petitioner and has perused the paper-book and finds that the impugned orders have been rightly passed and the present revision petition, being meritless, deserves to be dismissed for the reasons detailed hereinafter.

4. It is not in dispute that the respondent had filed a suit for recovery of Rs.2,50,000/- with interest @ 9% per annum from the date of execution of receipt dated 14.02.2018 till its realization against the present petitioner. It was the plea of the respondent-plaintiff in the suit that the present petitioner had taken Rs.2,50,000/- from the plaintiff on 14.02.2018 for domestic needs and had executed a pronote and receipt to the said effect on 14.02.2018 in the presence of marginal witnesses after receiving the said amount. The trial Court vide judgment dated 28.07.2021 decreed the suit ex parte. A perusal of the said judgment would show that it was noticed in paragraph 3 that despite due service through registered post, the present petitioner had failed to put in appearance in the Court and was accordingly proceeded against ex parte vide order dated 10.02.2021. The original pronote and receipt dated 14.02.2018 were duly exhibited as Ex.P1 and Ex.P2 and the said documents alongwith the other documents as well as the oral evidence of PW-1, PW-2 (being the scribe) and PW-3 (being the attesting witness) were also taken into consideration and after taking into consideration the 2 of 6 Neutral Citation No:=2025:PHHC:009146 entire documents and evidence on record, the suit filed by the respondent was decreed and the present petitioner was held liable to repay the amount of Rs.2,50,000/- alongwith interest at the rate of 9% per annum on the principal amount w.e.f. 14.02.2018 till actual realization of the decretal amount.

5. Thereafter, the petitioner filed an application under Order 9 Rule 13 CPC which was dismissed by the trial Court vide order dated 22.08.2023 after giving due opportunities to both the parties to lead evidence. The trial Court had observed that the service on the present petitioner had been duly effected as the registered cover was duly sent on 02.12.2020 and the petitioner was proceeded against ex-parte on 10.02.2021, after waiting for a period of 30 days, as no one had appeared on behalf of the present petitioner. It was further observed that a perusal of the record would show that the summons were issued on the address which had been mentioned in the plaint and which had been mentioned in the application under Order 9 Rule 13 CPC and thus, there was rebuttable presumption raised under the provisions of the Indian Evidence Act (now The Bharatiya Sakshya Adhiniyam, 2023) read with Section 27 of the General Clauses Act and that once the presumption was raised, it was incumbent upon the present petitioner to show that there was no actual service upon him, for which the petitioner/defendant did not lead any evidence and did not even get himself examined although he was the best person having the knowledge of the present case.

6. The appeal filed by the petitioner against the said order was 3 of 6 Neutral Citation No:=2025:PHHC:009146 dismissed by the 1st Appellate Court on 14.01.2025. While dismissing the said appeal, the 1st Appellate Court had taken into consideration the fact that the summons were issued to the petitioner/defendant through registered post vide postal receipt dated 02.12.2020 and it was after the expiry of 30 days from the date of said postal receipt, the petitioner/defendant was

proceeded against ex parte on 10.02.2021 and thereafter, the ex parte judgment and decree was passed on 28.07.2021 against the present petitioner. It was observed that service of the petitioner through registered post was duly permissible under law and the aspect of presumption was reiterated. It was also observed that the summons had been sent through registered post at the last known address and they had not been received back and thus, the same was taken as deemed service as per settled law and that the address which was mentioned in the said postal receipt was the same as mentioned in the application filed by the petitioner for setting aside the ex parte judgment and decree. Adverse inference was also drawn against the petitioner for not stepping into the witness box. It was further observed that there was no evidence to show as to how the petitioner came to know about the judgment and decree as his plea to the effect that he had come to know about the same from co-villagers, was not supported by any material evidence as no co-villager had been examined.

7. Section 27 of the General Clauses Act is reproduced herein below: -

"27. Meaning of service by post - Where any [Central Act] or 4 of 6 Neutral Citation No:=2025:PHHC:009146 Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre- paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

8. In the present case, it is not disputed that registered post vide postal receipt dated 02.12.2020 was issued at the address which is the admitted address of the petitioner and that the address mentioned in the same was the one which was mentioned in the application under Order 9 Rule 13 CPC. It is also not in dispute that the ex parte order was passed by the trial Court after waiting for the statutory period of 30 days from the date the said postal receipt dated 02.12.2020 was issued, inasmuch as, the ex parte order was passed on 10.02.2021.

9. Thus, keeping in view the above-said provisions of General Clauses Act as well as the provisions of the Indian Evidence Act (now The Bharatiya Sakshya Adhiniyam, 2023), the presumption of due service had been rightly drawn by both the Courts. Moreover, no law has been cited by learned counsel for the petitioner to show that in the said circumstances, the presumption of due service is not to be drawn. The said presumption has not even been remotely rebutted on behalf of the petitioner. Even the petitioner himself had not been examined nor he had been able to prima facie show as to from where the petitioner had learnt about the proceedings, inasmuch as, his plea that he had learnt about the 5 of 6 Neutral Citation No:=2025:PHHC:009146 same from co-villagers was not substantiated as no co-villager was examined. Moreover, the suit for recovery had been decreed in favour of the respondent/plaintiff by taking into consideration the original pronote and receipt dated 14.02.2018, which as per the case of the respondent/plaintiff was issued by the present petitioner in his favour.

10. Keeping in view the above-said facts and circumstances, the impugned orders are upheld and the present revision petition, being meritless, deserves to be dismissed and is accordingly dismissed.

January 22, 2025
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes

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