



CGHC010398362026

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 1310 of 2026

Abdul Rasid S/o Late Abdul Kuddus Aged About 51 Years R/o Village Kachhaud, P.S. And Tehsil Kelhari, Distt. Korea, Chhattisgarh.

... Petitioner(s)

versus

1 - Shriram Shriman S/o Ram Khilawan Aged About 60 Years R/o Village Tarabakra, P.S. And Tehsil Kelhari, Distt. Korea, Chhattisgarh.

2 - Vijendra S/o Late Vanshroop Aged About 45 Years R/o Village Semra, Tehsil Manendragarh, Distt. Korea, Chhattisgarh.

3 - Lalan S/o Late Vanshroop Aged About 42 Years R/o Village Semra, Tehsil Manendragarh, Distt. Korea, Chhattisgarh.

4 - Devprasad S/o Late Vanshroop Aged About 40 Years R/o Village Semra, Tehsil Manendragarh, Distt. Korea, Chhattisgarh.

5 - Suresh S/o Late Vanshroop Aged About 38 Years R/o Village Semra, Tehsil Manendragarh, Distt. Korea, Chhattisgarh.

6 - State of Chhattisgarh Through Collector Korea, Baikunthpur, Distt. Korea, Chhattisgarh.

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner(s) : Mr. Sudhir Kumar Verma, Advocate.

For State : Mr. Manish Kashyap, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Order on Board

09/10/2026

Heard.

1. The present is a writ petition filed by the petitioner against the impugned order dated 15.05.2026 passed by the learned Second

Additional District Judge, Manendragarh, District Korea, in Misc. Civil Appeal No. 02/2022, whereby the Misc. Civil Appeal filed by the petitioner has been dismissed and the order dated 19.07.2022 passed by the learned Civil Judge Class-II, Manendragarh, District Korea, in Misc. Civil Case No. 01/2013 has been affirmed.

2. Learned counsel for the petitioner would submit that the petitioner was defendant No. 3 before the learned trial Court, where respondent No. 1 was prosecuting a suit for specific performance of the contract. The suit was decreed ex parte vide judgment and decree dated 19.10.2002. When the ex parte judgment and decree came to the knowledge of the petitioner (defendant No. 3), he moved an application under Order 9 Rule 13 of the CPC on 03.11.2003 for setting aside the ex parte judgment and decree passed by the learned trial Court. The said application was adjourned from time to time for one reason or another, however, it was dismissed for want of prosecution on 09.09.2016. The application filed by the petitioner for restoration of the said application under Order 9 Rule 13 of the CPC was also dismissed by the learned trial Court vide order dated 27.06.2019. The petitioner approached the appellate Court, challenging the order dated 27.06.2019 passed by the learned trial Court in Misc. Civil Appeal No. 12/2019. The said Misc. Appeal was allowed vide order dated 21.10.2020, and the order dated 09.09.2016 was set aside, and the matter was remitted back to the learned trial Court for fresh consideration of the application filed by the petitioner. Thereafter, vide order dated 19.07.2022, the application filed by the petitioner under Order 9 Rule 13 of the CPC was dismissed on the ground that the petitioner had failed to explain a plausible reason for his non-appearance in the proceedings of the case. He would

further submit that the application of the petitioner should not be dismissed on technical grounds, but the petitioner may be provided an opportunity to put up his case before the learned trial Court. He would also submit that, though the ex parte decree was passed in the year 2002, the petitioner has been challenging the impugned judgment and decree since 2003, and his application for setting aside the ex parte decree has been rejected on technical grounds. Therefore, the same may be set aside, and the petitioner may be provided a proper opportunity to defend his case, as the issue involved in the suit relates to property rights.

3. I have heard learned counsel for the petitioner and perused the documents annexed in the petition.
4. The sequence of events, i.e., the passing of the ex parte decree dated 19.10.2002 for specific performance of the contract, filing of the application by defendant No. 3 for setting aside the ex parte decree on 03.11.2003, dismissal of his application on 19.09.2016 for want of prosecution, filing of the application for restoration of his application, dismissal of his restoration application on 27.06.2019, and the order passed in appeal dated 21.10.2020, are not in dispute. When the petitioner approached the learned trial Court for setting aside the ex parte decree, he was required to satisfy the Court that he was prevented by sufficient cause from appearing when the suit was called for hearing. Though the copy of the application filed by the petitioner has not been annexed to the present petition, from a perusal of the order dated 19.07.2022, it transpires that the petitioner raised a ground in the application that the summons was served upon him on

15.11.2003. However, he also raised a ground that he received a notice in the execution proceedings relating to the impugned judgment and decree dated 20.10.2002 and that he had not received any summons or notice of the suit. He came to know about the proceedings only on 15.11.2003, when he received notice in the execution proceedings, and thereafter, he immediately filed his application for setting aside the ex parte decree. Whereas, from the impugned judgment dated 19.10.2002 (Annexure P/2), it transpires that defendant No. 3 had appeared in the civil suit and filed his written statement. From paragraph 7 of the judgment passed by the learned trial Court, it transpires that defendant No. 3 appeared and filed his written statement, denying the plaint averments. Thus, the grounds raised by the petitioner in his application under Order 9 Rule 13 of the CPC appear to be misconceived, as he had already participated in the suit.

5. The learned trial Court has also observed that defendant No. 3/petitioner could not demonstrate any plausible reason that prevented him from appearing in the proceedings before the learned trial Court. Therefore, the application filed by the petitioner was rejected on 19.07.2022.
6. The learned appellate Court has also considered that the appellant/petitioner could not demonstrate any palpable infirmity in the order passed by the learned trial Court rejecting his application under Order 9 Rule 13 of the CPC on the ground that he had failed to demonstrate any sufficient reason for his non-appearance in the proceedings.

7. Having gone through the entire material produced in the petition and the grounds raised by the petitioner, I do not find any perversity or jurisdictional error in rejecting the application filed by the petitioner as well as in dismissing the appeal by the learned appellate Court.
8. Accordingly, the present writ petition fails and is hereby **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Alok