

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CMPMO No.331 of 2026
Decided on: 10.08.2026

Om Parkash

....Petitioner

Versus

Kashmir Singh

...Respondent

Coram

Hon'ble Mr. Justice Romesh Verma, Judge

Whether approved for reporting?

For the petitioner:	Mr. R.K. Sharma, Senior Advocate with Mr. Arun Kumar, Advocate.
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For the respondent:	Mr.Lalit Sehgal, Advocate.
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Romesh Verma, Judge (oral)

The instant petition has been filed against the impugned order dated 11.05.2026 passed by the learned Senior Civil Judge, Nadaun, District Hamirpur, whereby the application filed by the defendant/petitioner under Order 9 Rule 7 of the Code of Civil Procedure (CPC) seeking setting aside of the ex-parte order dated 02.12.2021 was dismissed.

2. The facts, as emerge in the present case, are that the respondent/plaintiff filed a civil suit for recovery of Rs.2,00,000/- as damages for injuries alleged to have been sustained by the plaintiff on account of the acts of the defendant. As per the case as set up by the plaintiff, he enjoys a good reputation in society and is engaged as a mason in the locality. The plaintiff was engaged by

Smt. Reena Devi, wife of Shri Kamal Singh, for house construction work. Suddenly, the brother-in-law of owner Smt. Reena Devi, arrived at the spot, confronted and abused her and asked her to stop the construction work. It is alleged that the defendant attacked Smt. Reena Devi on the fateful day of 12.05.2020. Thereafter, the defendant assaulted the plaintiff on his back with a bamboo stick. Consequently, the plaintiff fell from a height and sustained severe injuries on his back and left hand. It is further alleged that the defendant abused the plaintiff as well as Smt. Reena Devi and threatened them with dire consequences. The defendant intentionally acted to cause annoyance, inconvenience, danger, injury and criminal intimidation with ill will towards Smt. Reena Devi and the plaintiff. Under these circumstances, the incident caused severe mental and physical agony to the plaintiff. Due to the injuries inflicted by the defendant, the plaintiff could not fully recover the function of his hand despite medical treatment. Consequently, the plaintiff instituted the suit seeking decree for recovery of damages to the tune of Rs.2,00,000/- against the defendant.

3. The learned trial Court issued notices for service of the defendant for 02.12.2021. Admittedly, on the said date, the defendant failed to appear before the Court, whereupon the learned trial Court proceeded the defendant against ex-parte.

4. Subsequently, the defendant/petitioner filed an application under Order 9 Rule 7 CPC on 30.03.2022 for setting aside the ex-parte order dated 02.12.2021. In the application, the applicant averred that he was not served in accordance with the requirements of law and that a copy of the plaint was provided to him only on 10.03.2022 through his cousin, Shri Mohnder Singh, which shows that the service was not effected on the present defendant personally.

5. The application came to be resisted by the respondent by refuting all the allegations as made in the application. The learned trial Court vide its impugned order dated 11.05.2026 dismissed the said application

6. Feeling dissatisfied, the defendant/petitioner has approached this Court by challenging the impugned order.

7. It is contended by learned counsel for the petitioner that the impugned order is erroneous and liable to be quashed and set aside.

8. On the other hand, learned counsel for the respondent has defended the impugned order. The learned counsel for the respondent has drawn the attention of this Court to the affidavit filed by the applicant/defendant, while entering the witness box, wherein he has stated that he received the summons personally from the process server.

9. It is contended by the learned counsel for the respondent that the stand which has been taken by the defendant is mutually destructive and no relief can be granted to the petitioner in the attending facts and circumstances of the case.

10. It is an admitted fact that the present petitioner is a driver by profession and as submitted by the learned Senior Counsel that on account of his driving profession, he has to move to different places. He further submits that though the defendant stands duly served for 02.12.2021, but could not appear on account of his professional commitments. He submits that immediately on the very next date of hearing, which was fixed by the learned trial Court, the instant application has been filed. Therefore, he has shown his bona fide. He further submits that non-filing of the application is neither intentional nor willful.

11. This court is in agreement with the contention of the learned Senior Counsel. As the defendant was proceeded ex-parte on 02.12.2021 and on the very next date which was fixed by the learned trial Court, he filed the instant application without any delay. Being a rustic villager, it seems that he could not appear before the Court and in the considered opinion of this Court, the non-appearance of the defendant is neither intentional nor willful, but the same has occurred under the unavoidable circumstances.

12. Though the learned trial Court has rightly adjudicated the point in controversy, however, in the interest of justice and as a matter of indulgence, the impugned order which has been passed by the learned trial Court is quashed and set aside by permitting the present petitioner/defendant to join the proceedings from the very said date when he was proceeded ex-parte, i.e., on 02.12.2021, so that he can contest the proceedings as initiated by the plaintiff for the grant of recovery of damages. The indulgence is being shown by this Court on payment of costs of Rs.5,000/- to be paid by the petitioner to the respondent on the next date of hearing.

13. The parties are directed to appear before the learned trial court on 02.09.2026. It is made clear that in case the cost of Rs.5,000/- is not paid by the petitioner to the respondent on the next date, in that event, the impugned order 11.05.2026 shall revive automatically.

14. In view of observations made hereinabove, the present petition is disposed of along with pending application(s), if any.

(Romesh Verma)
Judge

10th August, 2026
(vt)