

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.8797 of 2014(O&M)

Date of Decision:-24.12.2014

Swaran Singh.

.....Petitioner.

Versus

Nirmal Singh & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. T.N. Gupta, Advocate &
Mr. Vishal Sharma, Advocate for the Petitioner.

JASWANT SINGH, J.(ORAL)

Defendant no.2 is in revision aggrieved against the order dated 11.10.2012 (P-8) passed by the learned Additional Civil Judge(Sr. Divn.), Baba Bakala whereby his application for setting aside ex-parte judgment and decree dated 26.08.2009 was dismissed and the said findings were affirmed by the learned Additional District Judge (Adhoc) FTC, Amritsar vide order dated 19.11.2014 (P-10).

Learned Counsel for the petitioner has vehemently argued that petitioner/defendant no.2 was never served and he only came to know about the passing of the judgment and decree on 11.03.2010 when he received the summons of execution filed by decree holder/respondent to execute the decree dated 26.8.2009 which was fixed for 5.4.2010. Thus, it was argued that it is apparent that the petitioner was never aware about the passing of

said judgment and decree against him and thus, the learned Courts below have committed grave illegality by not allowing the application under Order 9 Rule 13 CPC.

After hearing learned Counsel for the petitioner and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and same deserves to be dismissed.

It is not in dispute in the present case that the address of the petitioner is same which was given in the original suit. It is further not in dispute that at the time of adducing his evidence, petitioner/defendant no.2 has not examined the process server to prove that the report of service was incorrect. It is settled position of law that the onus is always upon the party to prove the fact which he alleges. In the present case, the petitioner had alleged that he was never served, however, adverse inference has to be drawn against him for not examining the process server or leading any other evidence which would show that he was never served properly. Not only this, while deposing before the Court as AW-1, Sarwan Singh-petitioner had stated that he came to know about the judgment and decree dated 26.08.2009 on 11.03.2010 but despite the said knowledge, the present application for setting aside the ex-parte judgment and decree was filed on 01.06.2010 which is obviously beyond the statutory period of limitation I.e. 30 days. The said delay has not at all been explained by the petitioner and thus, the application has rightly been rejected on the ground of delay as well by both the Courts below.

Both the Courts below have rightly appreciated the evidence on record while coming to the conclusion that the petitioner was properly served and further that he has filed the application beyond period of 30 days

and, therefore, was not serious in contesting the suit itself. The findings recorded by the Courts below does not warrant interference and consequently the present revision petition is dismissed by upholding the orders passed by the Courts below.

**(JASWANT SINGH)
JUDGE**

December 24, 2014
Vinay