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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.831 of 2016 (O&M)
Date of Decision: 08.03.2019**

**DIAL SINGH THROUGH HIS LRS. MOHINDERO DEVI AND
ORS.Petitioners**

**Vs
DES RAJ AND ORS.Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Rajesh K. Dadwal, Advocate
for the petitioners.

Mr. R.S. Chauhan, Advocate with
Mr. Rohit Sapehiya, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. This revision petition has been preferred against the order dated 18.12.2015 passed by the Addl. District Judge, Hoshiarpur, vide which order dated 05.02.2012 passed by Civil Judge (Jr. Divn.) Mukerian was set aside and application under Order 9 Rule 13 CPC has been allowed whereby ex parte judgment and decree dated 22.09.2005 was set aside.

[2]. Indulgence has been granted by the lower Appellate Court in setting aside the ex parte judgment and decree dated 22.09.2005. Evidently, the summon issued to defendant No.1 Reiza Ram was not accompanied by copy of plaint in terms of

Order 5 Rule 2 CPC. It is mandatory requirement of law that every summon shall be accompanied by a copy of plaint. The non-compliance of Rule 2 of Order 5 CPC would result in material prejudice to the defendant No.1 as he would not be in a position to file his written statement. The view expressed in **Nahar Enterprises vs. M/s Hyderabad Allwyn Ltd. and another, 2007(2) R.C.R. (Civil) 413** can be relied.

[3]. It is true that the suit was filed in the year 1999 and the trial Court took about 6 years to decide the same after proceeding defendant No.1 against *ex parte*. Thereafter, defendant No.1 filed an application under Order 9 Rule 13 CPC on 18.11.2006. The lower Appellate Court has granted indulgence particularly in view of the background that no person should be condemned unheard. There may be some instinct of omission on the part of defendant No.1 in not appearing before the Court after receiving the summon. But the omission on the part of the process server was also in utter disregard to the mandatory provision of law.

[4]. During course of arguments before this Court, learned counsel for the petitioners stated that since the indulgence has already been granted by the Addl. District Judge in setting aside the *ex parte* judgment and decree, therefore, the respondents be burdened with some adequate costs for delay in disposal of

the suit.

[5]. Perusal of the record would show that the *ex parte* judgment and decree dated 22.09.2005 has been set aside by the Addl. District Judge, Hoshiarpur without imposing any costs upon the respondents, therefore, I deem it appropriate to maintain the order dated 18.12.2015 by imposing costs of Rs.15,000/- to be paid to the petitioners/plaintiffs.

[6]. Learned counsel for the respondents very candidly accepted the aforesaid imposition of costs and undertakes on behalf of the respondents that the amount of costs shall be paid before the trial Court within a period of one month from today. The payment of costs shall be the condition precedent for granting indulgence in favour of the respondents by the trial Court for further proceedings in accordance with law.

[7]. Both the parties are directed to appear before the trial Court on 01.04.2019. Keeping in view the nature of litigation, the trial Court shall make every positive endeavour to decide the suit at the earliest by giving short adjournments.

[8]. In view of above, the present revision petition is disposed of.

March 08, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No