

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

**CR-1387-2019 (O&M)**

**Date of Decision: 31.01.2023**

Major Singh

....Petitioner

Versus

Prem Kumar Rattan

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:** Mr. H.S. Saggu, Advocate  
for the petitioner.

Mr. Jasbir Rattan, Advocate  
for the respondent.

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**ARUN MONGA, J. (ORAL)**

Petition herein is for setting aside order dated 15.12.2017 (Annexure P-4) passed by Ld. Civil Judge (Sr. Divn.), Sangrur affirmed in appeal by the Ld. Additional District Judge, Sangrur vide order dated 09.01.2019 (Annexure P-5), whereby the application of petitioner/defendant under Order 9 Rule 13 CPC, for setting aside *ex-parte* judgment and decree dated 12.04.2012 (Annexure P-1) passed in Civil Suit No.68 of 21.05.2009, was dismissed.

2. Brief facts as pleaded in the petition are that the case relates to the rivalry of two employees of Cooperative Department. Petitioner is Manager of Cooperative Bank in Sangrur District, while respondent was an Auditor. Respondent filed a suit for recovery of Rs.5 lakh as damages against the petitioner for alleged defamation suffered by him due to the

complaints made by petitioner, which were ultimately filed or withdrawn by petitioner. Respondent maneuvered the proceedings of purported service of petitioner in the civil suit and without the knowledge of petitioner, obtained the *ex-parte* judgment and decree dated 12.04.2012. In fact, petitioner was aggrieved because respondent made false allegations for which false criminal case was registered against petitioner. In that case, petitioner was acquitted after trial. During this process, petitioner was tortured for 29 days by the police to secure his admission in respect of wrong charges leveled by respondent. Petitioner came to know of the said judgment and decree in April-2014, when he enquired from the concerned official of his department that as to why he was paid less salary and the concerned official told him that his salary was being paid to him after deducting the amount as ordered by the Court. Meaning thereby, petitioner came to know about the judgment when portion of his salary was attached by the Executing Court in execution of the *ex-parte* judgment and decree dated 12.04.2012 (Annexure P-1). Thereafter, petitioner immediately filed an application under Order 9 Rule 13 CPC.

2.1. Application under Order 9 Rule 13 CPC was contested by respondent. Vide impugned order (Annexure P-4) the said application was dismissed stating that petitioner was properly served and also stating that the application was filed beyond limitation. Petitioner filed an appeal and Ld. First Appellate Court, though found that neither the petitioner was validly served in this case and was not aware of the pendency of the suit nor he was aware of the *ex-parte* judgment and decree, but Ld. First Appellate Court vide impugned order (Annexure P-5) dismissed the appeal on the ground of

limitation for delay of only two days, stating that petitioner had not filed any application for condonation of delay.

3. Having heard the arguments and perusing the impugned order passed by Ld. First Appellate Court, seemingly there are two findings rendered in favour of petitioner herein. Pertinently, respondent has not challenged any of those findings rendered by Ld. First Appellate Court.

Same being apposite are reproduced herein below:

“xxxx                      xxxx                      xxxx                      xxxx

10. In his cross-examination, he admitted that he did not know Major Singh personally and he cannot tell the name of Patti in which the house of Major Singh was situated. He further stated that even he could not tell the names of neighbours of Major Singh and he had not got the signatures of Chowkidar, Lamberdar or any villager as witness. He voluntarily stated that there is no need for making witness if the summons is directly served to the person. He further stated that he did not take any identity proof of Major Singh and did not know about the profession of Major Singh. He denied the suggestion that Major Singh had not received any summons Ex.RW1/C from him. He also denied the suggestion that Major Singh had not put his initials on the summons as Mark-RX and Mark-RY.

11. The aforesaid testimony of RW-1 Om Parkash manifestly proves that he was not having any previous acquaintance with the defendant Major Singh. It is further transpired that process server had not verified from the persons from the neighbourhood or any respectable person of the village that the person to whom he had delivered the summons, was Major Singh.

12. In **Shyam Singh Vs. Madan Singh and others (supra)**, the process server denied the personal acquaintance with the defendant and no-one was with him from the village, could identify the defendant at the time of service. The Handwriting and Finger Print Expert examined by the defendant has also not approved the alleged signatures of defendant on the summons. Therefore, Hon'ble High Court of Punjab and Haryana held that there was absence of material showing identification of defendant at the time of Dasti summons by the process server.

13. In **Sukhbir Singh Vs. Mansa Ram and others (supra)**, Hon'ble High Court of Punjab and Haryana held that a careful perusal of Judgment reveals that process server did not know the petitioner earlier. None accompanied the process server nor process server got attested the signatures of defendant from any other person known to defendant or residing in the locality where the service was allegedly effected. In the absence of the same, Hon'ble High Court of Punjab and Haryana held that it would be hazardous to rely upon the statement of a process server and thereby deny the petitioner's valuable right of hearing. Process server has not performed his duties properly. The process server was duty bound to get him indemnified by a person known to him and also to record the same effect in his report.

14. The similar observation was given by Hon'ble High Court of Punjab and Haryana in **Kailash Chand Jain and others Vs. Chhaju Ram Jain and others (supra)**. The report was not attested by independent witness and therefore the report about the service of summons was not accepted. Similar observations were made in case titled **Umarddin and another Vs. Liyakat Ali and another (supra)**.

15. In view of the aforesaid authoritative pronouncement of Hon'ble High Court of Punjab and Haryana, this Court has no hesitation to hold that in the present case, the report of process server cannot be taken into consideration regarding the effective service upon the defendant. The process server was not having any previous acquaintance with the defendant. He based his opinion regarding the identification of Major Singh, on mere declaration by the person to whom he delivered the summons. Accordingly, aforesaid service cannot be said to be a valid and proper service as there is no cogent material on the record that process server served the summons upon present defendant/appellant Major Singh. Even, at the time of examination of process server in the Court, no attempt was made by plaintiff to get the defendant Major Singh identified from him, to remove the doubt.

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21. The aforesaid judgments do not help the case of appellant rather it goes against him. The applicant/ defendant aware of the judgment and decree on receipt of information regarding the reason of deduction of his salary and therefore he engaged his counsel and as soon on 15.03.2014, his counsel appeared on his behalf, a specific knowledge of passing of judgment and decree can be attributed to the appellant. By no stretch of imagination, the aforesaid knowledge can be termed as vague information. Therefore, in the present case, the limitation

*starts with effect from 15.03.2014. The appellant has not placed on record the certified copy of judgment and decree, however, a photocopy is available on the file and as per the photocopy, the application for obtaining certified copy was moved on 04.04.2014 and it was delivered on 11.04.2014. Even, after excluding the eight days spent in obtaining certified copy, the present application is time barred. The aforesaid application was required to be filed till 22.04.2014, however the same was filed on 24.04.2014. The applicant did not move any application for condonation of delay before the learned lower Court and therefore in absence of any such application, the learned lower Court had no option, but to dismiss the application under Order 9 Rule 13 of CPC. Consequently, it is held that the point for determination No.2 is answered in negative.”*

4. Since respondent has not challenged any of the above two findings, as mentioned above, to that extent the same have attained finality *qua* the parties. Ld. First Appellate Court while going through the testimony of the process server has clearly established that the service was not effected.

The testimony of the process server is as under:

*Om Parkash, Process Server, attached to the Court of learned Civil Judge (Sr. Division), Sangrur.*

*I am working as process server for the last 25 years. On 24.05.2009 I was working as process server attached to the Court of learned Civil Judge (Sr. Division). Sangrur. I have seen the original summons in the attached file titled as Prem Kumar Vs. Major Singh, suit no. 8/21.05.2009 for the service of Major Singh defendant. The said summons were marked to me for the service of defendant Major Singh. After receiving summons I went to Village Gurmukh Singh Wali Chhanna and on reaching the Village I inquired about the defendant and from some villager I came to know about Major Singh defendant's house. Then I reached to the house of Major Singh and on my calling Major Singh came out from the house. I verified from Major Singh about his identity and he told that he was Major Singh. Then I got him served with summons by delivering the copy of summons and copy of plaint. On receiving the same Major Singh write on the summons received copy and then put his initials with date on summons. Then I made my report. I have seen the report and my signatures on the summons with my own hand and I identify the same. The certified copy of summon is ExRW1/A and my report*

*Ex RWI/B. The initial and writing of Major Singh is Mark RX. Original summon is Ex. RWI/C and my report on the original summon is Ex. RWI/D on which I identify my signatures and report. The initials and writing of Major Singh on the original summon is Mark RY.*

*XXXX by Sh. G.S. Nandpuri, Advocate, counsel for applicant.*

*I do not know Major Singh personally. I cannot tell the name of patti in which the house of Major Singh is situated. I even cannot tell the names of neighbourers of Major Singh. I had not got the signature of any chowkidar, numberdar or any villager as witness. Volunteered there is no need for making witness if the summons is directly served to the person. I had not taken any identity proof of Major Singh. I do not know about the profession of Major Singh. It is wrong to suggest that Major Singh applicant had not received any summon Ex.RWI/C from me. It is wrong to suggest that I had made false report at the instance of respondent Prem Kumar. It is wrong to suggest that Major Singh had not put his initials on the summon as Mark RX and Mark RY. It is wrong to suggest that I deposed falsely.”*

5. Perusal of the findings read with the statement *ibid* makes it amply clear that the service was not proper. Having once read the findings based on the aforesaid testimony, Ld. First Appellate Court was unnecessarily swayed with the finding that there was no application for condonation of delay filed by the petitioner to condone the delay of 2 days while rejecting the application under Order 9 Rule 13 CPC for setting aside ex-parte judgment and decree. Therefore, petitioner was non-suited to get any relief *qua* the condonation.

6. Paras No.3 to 5 of the petitioner’s application dated 24.04.2014 (Annexure P-2) are as under:-

*“3. That for the last two months, the salary of Major Singh applicant is being released less than his total emoluments. After the first payment, the applicant thought it might be due to a clerical mistake of his department or official and he kept quiet. On the next month, while withdrawing his salary, the applicant again noticed that lesser salary again is being paid to him. Than*

*he enquired in that regard from the officials and came to know regarding the court order.*

*4. That the respondent/plaintiff has filed an execution, which is illegal, void and non maintainable and is liable to be stayed in the present circumstances. That on 03/04/2014, when the applicant inquired from the concerned officer of his department, that why his salary is being given him less, he was informed by the concerned official that his salary is being paid to him after deducting the amount as ordered by the Id. C.J.(S.D.) Sangrur.*

*5. That then, the applicant approached his lawyer Sh. Anurag Chopra Advocate and informed him regarding the said matter and then he suggested him to apply for the copies and after receiving the copies, came to know regarding the said order dated 21/07/2009 and judgment and decree dated 12/04/2012 and regarding the pendency of execution.”*

7. In my opinion, Ld. First Appellate Court rather took over-emphatic view and merely on the ground that formal application was not filed, otherwise in the knowledge, and was pleaded from the date petitioner caused appearance in the execution proceedings, ought to have dealt with the explanation of delay of 2 days. In this contest, reference may be had to ***Bhagmal & others vs. Kunwar Lal and others***<sup>1</sup> wherein the Apex Court set aside the *ex-parte* decree after 30 days from the date of knowledge but without any application for condonation of delay.

8. *Per contra*, learned counsel for the respondent argues that if the application is not filed, the Court is not empowered to grant any relief *qua* the condonation. To support his arguments, learned counsel also relies upon the Apex Court judgment in ***Kamlesh Babu and others vs. Lajpat Rai Sharma and others***<sup>2</sup>.

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<sup>1</sup>2010 AIR (SC) 2991

<sup>2</sup>2008(2) R.C.R. (Civil) 872

9. I have read both the judgments and collective reading of the same suggests that what has to be seen is whether the delay has been explained or not, that is, the very intent or purpose of filing the application and relying upon the later judgment of the Apex Court, the benefit of the findings rendered by 1d. First Appellate Court has to be accorded to petitioner.

10. In the premise, the impugned orders are set aside. Application filed by petitioner/defendant under Order 9 Rule 13 CPC is allowed. Learned trial Court is directed to proceed further in accordance with law. Petitioner is allowed to cause appearance and file his written statement, for which only one opportunity shall be granted.

11. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

**( ARUN MONGA )**  
**JUDGE**

**January 31, 2023**  
*ashish*

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| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |