



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No.14 of 2017(O&M)

Reserved on: 05.08.2024

Pronounced on: 20.08.2024

NARENDER SINGH AND OTHERS

... APPELLANTS

Vs.

PARAMJEET KAUR AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Kanwaljeet Singh, Sr. Advocate, with
Mr. Navyuggeet Brar, Advocate, for the appellants.

Mr. Sanjiv Aggarwal, Advocate, for respondents No.1 & 2.

Respondent No.4 proceeded *ex parte* vide order dated
11.07.2019.

DEEPAK GUPTA, J.

Appellants herein were three out of the six defendants in Civil Suit No.RBT451/2003/2007 filed on 24.07.2003. The suit was filed by the two plaintiffs, namely, Paramjit Kaur and Manjeet Kaur, who are respondents No.1 & 2 herein. The suit was decreed *ex parte* by the trial court on 04.11.2009 qua the three appellants. They moved an application under Order 9 Rule 13 of CPC on 24.04.2010 for setting aside the *ex parte* judgment & decree but the same was dismissed on 23.09.2014 by the concerned trial Court. Appeal filed by them along with some other defendants, who were also proceeded *ex parte*, was dismissed on 20.10.2016. By way of this appeal, the appellants have challenged the aforesaid orders dated 23.09.2014 and 20.10.2016 to be wrong and illegal. They have further prayed to set aside the *ex parte* judgment and decree dated 04.11.2009.

2.1 Perusal of the paper book would reveal that dispute pertains to

the estate of one Amar Nath son of Krishan Singh, who had expired on 11.12.1996. He left behind his widow Smt. Uma Devi besides six children i.e. three sons and three daughters. Two of the daughters i.e. plaintiffs brought the suit claiming that Amarnath expired intestate and that on his death, they alongwith defendant No.6 had inherited $\frac{1}{2}$ share i.e., $\frac{1}{6}$ share each in the suit property; whereas three other sons, i.e. defendant No.1 – Narender; Amarjeet Singh (*the deceased husband of defendant N: 2 Manjeet Kaur and father of defendant N: 3 Baldev Singh*); and Karan Singh (*the deceased husband of defendant No.4 – Harbhajan Kaur and father of defendant No.5 Arvinder Singh*), had inherited the remaining $\frac{1}{2}$ i.e. $\frac{1}{6}^{\text{th}}$ share each. They prayed for joint possession of their share in the suit properties.

2.2 Defendant No.4 – Smt. Harbhajan Kaur and her minor son-defendant No.5-Arvinder Singh, who were served personally, were proceeded *ex parte* on 19.02.2005. Defendant Nos.1 to 3, i.e. Narender and legal heirs of Amarjeet Singh were proceeded *ex parte* on 08.08.2006 on the basis of service by publication in a local newspaper. Defendant No.6 – Smt. Gurmeet Kaur was proceeded *ex parte* on the basis of *munadi* service vide order dated 01.10.2007.

2.3 Vide order dated 29.11.2007, it was realized by the Court that defendant No.5 – Arvinder Singh was minor and therefore, fresh notice was directed to be served upon him through his next friend. As the notice was received with the report of refusal and affixation, therefore, vide an order dated 04.04.2008, an advocate was appointed as a Court Guardian for him.

2.4 Said Court Guardian appearing on behalf of minor – defendant No.5 filed written statement contesting the claim of the plaintiffs. It was pleaded on his behalf that Shri Amar Nath had executed a registered Will dated 28.08.1996 in favour of his wife Smt. Uma Devi and on that basis mutation No.5264 was sanctioned on 12.11.1997 in favour of said Smt. Uma Devi. Smt. Uma Devi later on executed a registered Will dated 07.05.1998 in favour of her three sons, i.e. Narender, Amarjeet Singh and Karan Singh and on the death of Smt. Uma Devi on 25.05.1998, the mutation on the basis of

her Will was sanctioned in favour of her three sons.

2.5 Necessary issues were framed by the trial Court and it was held that the Wills were not proved as per law. The suit filed by the plaintiffs was decreed on 04.11.2009 and 06 branches of Amar Nath were held entitled to 1/6th share each in the suit properties.

3.1 All the defendants except defendant No.6- Gurmeet Kaur moved an application under Order 9 Rule13 CPC on 24.04.2010 for setting aside the *ex parte* orders against them passed from time to time and also the *ex parte* judgment and decree dated 04.11.2009. They pleaded that they had not been served in accordance with law. Various circumstances were pointed out, as to how report was received on the summons and that their given addresses were incorrect at which they were not residing and despite direction by the Court, their correct addresses were not filed and so, they were wrongly proceeded *ex parte* on the basis of substituted service of publication. It was also pleaded that they had come to know about the *ex parte* judgment and decree only on 23.04.2010 and so, had moved the application on 24.04.2010 for setting aside the *ex parte* judgment and decree.

3.2 The plaintiffs of the case contested the application, pleading that the applicants–defendants were duly served in accordance with law and were well aware about the judgment and decree passed *ex parte* against them. They prayed for dismissal of the application.

3.3 Necessary issues were framed by the trial Court. Two of the defendants-applicants namely, Narender Singh and Smt. Manjeet Kaur entered the witness box and testified about their non-service and supported their stand as taken in the application to the effect that they were not served in accordance with law. They also tendered in evidence certain documents in order to show that they were not residing at the addresses given in the plaint and rather, they were residing at some different addresses. Respondents of the application, i.e. plaintiffs did not produce any oral evidence, though they only tendered certain documents.

3.4 After hearing both the sides, the trial Court dismissed the application under Order 9 Rule 13 CPC on 23.09.2014 by holding that the applicants were well aware about the *ex parte* judgment & decree passed against them and that application under Order 9 Rule 13 CPC was not filed within 30 days from the date of knowledge. Learned trial Court also observed that PW1-Narender Singh had come to know about the *ex parte* judgment and decree in November/December, 2009, but the application had been moved in April, 2010, i.e. beyond the limitation period of 30 days.

3.5 Two separate appeals were filed against the aforesaid order dated 23.09.2014, one by defendant No.1 & 2 – Narender Singh & Manjeet Kaur; and the other by defendant Nos.4 & 5, i.e. Harbhajan Kaur & Arvinder Singh. However, both these appeals were dismissed by the Appellate Court of learned Addl. District Judge, Kaithal, vide his common order dated 20.10.2016.

4.1 It is against the aforesaid orders that present second appeal against order has been filed by defendant Nos.1, 2 and 4, i.e. one of the sons of Amar Nath - Narender Singh; and respective widows of two other sons of Amar Nath.

4.2 By drawing attention of this Court towards the various zimini orders as passed by the trial Court during the proceedings of the main case, it is contended by learned counsel for the appellants that the appellants were never served. Repeated reports were received that their addresses given in the plaint was incorrect and that they were not residing thereat. Plaintiffs were asked to file their correct addresses but the same was not filed. Learned counsel has further drawn attention towards the order passed by the Court, as per which without recording any satisfaction that service upon the given address could not be effected, the Court straightway ordered for service by way of publication upon defendant Nos.1 to 3 and on that basis, they were proceeded *ex parte*. Learned counsel further contends that even defendant No.6 – Gurmeet Kaur was stated to be residing abroad as per the order dated 09.05.2006. However, no correct address was provided by the plaintiffs of

defendant No.6 and rather, substituted service of *munadi* was ordered and on that basis, she was proceeded *ex parte*.

4.3 On the other hand, learned counsel for respondent Nos.1 and 2-plaintiffs has defended the impugned orders as passed by the Courts below and drawn attention to the testimony of PW1 – Narender and PW2 – Manjeet Kaur in order to contend that they had come to know about the *ex parte* judgment and decree in November/December, 2009, but the application under Order 9 Rule 13 CPC has been moved in April, 2010, which is beyond the limitation period of 30 days provided under Article 123 of the Limitation Act and therefore, the Courts have rightly dismissed the application. Learned counsel has further drawn attention towards the fact that on behalf of one of the minor defendants, a Court Guardian was appointed, who had filed written statement, wherein he set up the Will of Amar Nath and also that of his wife Smt. Uma Devi. The contention is that in case the family members of said minor Arvinder Singh, were not aware about the suit, the Will as set up by the minor through his Court Guardian could not have come to the knowledge of the said Court Guardian, which also indicates that they had the full knowledge about the pendency of the suit.

5. I have considered submissions of both the sides and have appraised the record carefully.

6. First of all, it is necessary to notice the addresses of defendants as given in the plaint. These are as under:

Defendant N: 1	Narender Singh son of Shri Amar Nath son of Shri Krishan Singh r/o village Fatehpur District Kaithal
Defendant N: 2	Manjeet Kaur wife of Late Shri Amarjeet Singh son of Shri Amar Nath
Defendant N: 3	Baldev Singh son of Late Shri Amarjeet Singh son of Shri Amar Nath
	Rs/o House No. 287, Sector 45-C, Chandigarh

Defendant N: 4	Harbhajan Kaur wife of Late Shri Karan Singh son of Shri Amar Nath
Defendant N: 5	Arvinder Singh (minor) through Smt. Harbhajan Kaur, his mother as his next friend Late Shri Karan Singh son of Amar Nath.
	Residents of village Fatehpur District Kaithal
Defendant N: 6	Gurmeet Kaur wife of Late Kultar Singh r/p Gurnanak Colony, Ward N: 3, Pehowa

7. Now, let us have a look at the zimini orders as passed by the trial Court in the proceedings of Civil Suit No.RBT 451 of 2007/2003, which was filed on 24.07.2003. These read as under:-

Date of Order	Order
24.07.2003	Suit received by way of assignment. Office report perused. It be checked and registered. Now notice of the same be given to the defendants for 4.1.2004 on filing of PF etc.
02.01.2004	File taken up today as 4.1.2004 is Sunday. So the case is adjourned to 11.03.2004 for the same proceedings. All concerned be informed accordingly.
11.03.2004	PF etc. not filed. The same be filed with two days and then defendants be summoned for 11.6.2004
11.06.2004	Case received by way of transfer. It be checked and registered. A perusal of the case file shows that earlier when the case fixed for 4.1.2004, defendants No.1,4, 5 and 6 were not served and their summons were received back unserved. Summons to <u>defendants No.1 and 6 were received back with report of incorrect address</u>. Summons of defendants No.2 and 3 were not received back either served or unserved. Now fresh summons or to <u>defendant No.1 and 6 are ordered to be issued for 28.09.2004 on filing of correct address and PF etc.</u> and fresh summons to defendant No.2 to 5 are ordered to be issued for the date fixed on filing of PF etc. PF etc. not filed. The same be filed with two days and then

	defendants be summoned for 11.6.2004.
24.08.2004	File taken up today as I am availing earned leave from 25.08.2004 to 01.10.2004. Now case is adjourned to 11.12.2004 for cause already fixed. All concerned be informed accordingly.
11.12.2004	Notice issued to defendants No. 1, 2, 4 & 5 received back unexecuted, whereas <u>notice issued to the defendant No.6 received back with report of incorrect address.</u> Notice to defendant No.3 could not be issued for want of copy of plaint. Now fresh notices to defendants be again issued for 19.02.2005 on filing of correct address for defendant No.6 and copy of plaint for defendant No.3 etc.
19.02.2005	Notice issued to defendant No.4 and 5 received back duly served but none has appeared on behalf of the defendants No.4 &5 despite repeated calls. Hence, they are proceeded. Notices issued to remaining defendants not received back. Fresh be again issued for 5.5.2005 on filing of correct address of defendant No.6.
05.05.2005	File put up before me in view of order dt. 14.7.2k passed by the then Ld. District and Sessions Judge, KKR as Mrs. Gurvinder Kaur ACJ (SD) Kaithal is on leave. Notice issued to remaining defendants not received back. Fresh be again issued for 25.08.2005 on filing of correct address of defendant No.6.
25.08.2005	<u>Summon of defendant No.1 received back with report of Adampata. Correct address of defendant No.6 not filed. Defendant No.1 and 6 be summoned for 21.09.2005 on filing of correct address etc.</u> Defendants No.2 and 3 be also summoned for the date fixed on filing of PF, copies etc.
21.09.2005	<u>Summon of defendant No.6 received back with report of Adampata.</u> Summons of remaining defendants not received back. Defendant No.1 and 6 be summoned on correct address and defendant No.2 and 3 be also summoned for the next date i.e. 11.11.2005.
11.11.2005	Summons not received back. Defendant No.1,2,3 and 6 again be summoned for 16.01.2006.
16.01.2006	Summons of defendant No.1,2,3 and 6 not received back. Fresh again be issued for 24.03.2006.
24.03.2006	Summons of defendant received back unserved. Summons No.1 of defendant No.2 3 and 6 not received back. Fresh again be

	issued for 9.5.2006.
24.03.2006	<u>At this stage, counsel for the plaintiff makes a request that summons be allowed to be sent through registered post. Request is allowed.</u> Defendants No.1, 2, 3 and 6 summoned through registered post on filing of RC etc. for 9.5.2006.
09.05.2006	<u>RD of defendant No.1 received back with the report incomplete address. His complete address be filed then defendant No.1 be summoned. RD of defendants No.2 and 3 received back with report that they are not residing at the given address Their correct address be filed and then they be summoned.</u> RD of defendant No.6 received back with the report that she has left India. Her correct address be filed and then she be summoned. Case is thus adjourned to 18.8.2006.
12.05.2006	An application u/o 5 rule 20 CPC has been by plaintiffs. Heard. In view of the grounds mentioned in the application, the application is allowed. Defendant No.1,2 and 3 be summoned through publication in the newspaper "Bharat Desh Hamara" for 18.8.2006 on filing of publication charges etc. Defendant No.6 be summoned for the date fixed on filing of correct address.
18.08.2006	Publication effected upon defendants No.1, 2 and 3. none has appeared on behalf of defendant No.1 and 3 despite repeated calls. Hence, they ordered to be proceeded ex-parte. <u>Summons of defendant No.6 not received back. Fresh again be issued for 27.10.2006 on filing of correct address.</u>
27.10.2006	<u>Correct address not filed.</u> The same be filed within three days, then defendant No.6 be summoned for 23.1.2007.
23.01.2007	<u>Correct address not filed.</u> The same be filed within three days, then defendant No.6 be summoned for 20.02.2007.
20.02.2007	<u>Defendant No.6 again be summoned on filing of correct address for 10.04.2007.</u>
10.04.2007	<u>Correct address not filed.</u> The same be filed within three days, then defendant No.6 be summoned for 01.06.2007.
01.06.2007	<u>Correct address not filed.</u> The same be filed within three days, then defendant No.6 be summoned for 27.07.2007.
27.07.2007	<u>Notice to defendant No.6 could not be issued for want of copy and correct address.</u> The same be filed within 15 days. So as requested by plaintiff's counsel. Let defendant No.6 be summoned for 09.08.2007 on filing of copy etc. Effective steps

	be taken in this regard.
09.08.2007	<u>At this stage, an application u/s 5 Rule 20 CPC has been preferred by plaintiffs on the ground that the address of deft. No.6 which is in the knowledge of plaintiffs have already been mentioned in the plaint itself and despite issuance so many times summons as well as registered cover to deft. No.6, but the service of deft. No.6 could not be effected.</u> Application is supported with the affidavit of Manjeet Kaur, plaintiff vide which she has stated that service of deft. No.6 in could not be effected in an ordinary manner. Perusal of the file would reveal that since 18.08.06 service could effected upon circumstances, plaintiffs, deft. No.6. the on deft. No.6 not be In these prayer of be summoned through munadi for 1.10.2007 on filing MF etc.
01.10.2007	Munadi issued against deft. No.6 received back duly effected. Case called several times since morning but none is appearing on behalf of deft. No.6. It is already 2.30 P.M. No more wait is justified. Hence deft. No.6 is hereby proceeded against ex-parte. As requested, case stands adjourned to 29.11.2007 for ex-parte evidence.
29.11.2007	Case received by way of transfer. It be checked and registered. No ex-parte evidence is present. It has come to my notice that the defendant No.5 was proceeding against ex-parte vide order dated 19.02.2007 by the court of Ld. ACJ (SD), Kaithal but it is well settlement proposition that the minor cannot be proceeded ex-parte. So, now the interest of justice notice be again issued to the defendant No.5 though next friend for 18.02.2008.
18.02.2008	Notice issued to defendant No.5 received back unserved. Now, it be again issued to defendant No.5 through next friend for 4.4.2008
04.04.2008	Notice was issued upon the defendant No.5 through his next friend but notice has been received back with the report of refusal and affixation was made. The minor has been sued through his next friend i.e. his mother Harbhajan Kaur who has been impleaded as defendant at serial No.4 and she has already been proceeded ex-parte. The list has been filed by the plaintiffs to appoint Harvinder Kaur who is already next friend of the minor and second option has been given by the plaintiffs to appoint a Court Guardian. So, in the interest of justice, Mr. Hardeep Singh. Advocate is hereby appointed as Court Guardian for defendant No.5 Arvinder Singh and is fees is assessed Rs.600/- payable by the plaintiffs. Now, to come up for

	filing written statement on 09.6.2008.
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8. Perusal of all the orders as above, would reveal that on 11.06.2004, on the summons meant for defendants No.1 and 6, the report was received that given addresses were incorrect. Summons of defendants No.2 and 3 were not received back served or unserved and, therefore, the Court ordered for filing of the correct addresses of defendants No.1 and 6 and then issuance of the fresh summons to all the defendants on filing of the necessary process fee etc., within two days. As per order dated 11.12.2004, notices sent to defendants No.1, 2, 4 and 5 were received back unexecuted; notice to defendant No.6 was received back with the report of incorrect address; whereas notice to defendant No.3 was not issued for want of copy of the plaint and so, fresh notices were directed to be issued for 19.02.2005 on filing of correct address for defendant No.6 etc. Although, it was noticed in the earlier order dated 11.06.2004 that addresses of respondents No.1 and 6 were incorrect, but there is nothing on record to suggest that the plaintiffs ever filed the correct addresses of these defendants. Even in the order dated 11.12.2004, it is mentioned that notice sent to defendant No.6 was received with the report of incorrect address; whereas the notices to the other defendants No.1, 2, 4 and 5 were received unexecuted. Though the Court ordered for filing of the correct address of defendant No.6 only, there is nothing in this order dated 11.12.2004 to show that Court asked for filing the correct addresses of defendant No.1. As per the next order dated 19.02.2005, defendants No.4 and 5 (*Smt. Harbhajan Kaur and her minor son Arvinder*) were proceeded ex parte, as both of them had been duly served; and fresh notices to the remaining defendants were directed to be issued for 05.05.2005. Notices were not received back as per order dated 05.05.2005 and as per order dated 25.08.2005, notice sent to defendant No.1 was again received back with the report of incorrect address. It was also noticed that correct address of defendant No.6 had not been filed. The Court asked the plaintiffs to file the correct addresses of defendant No.1 and 6 and further directed to issue fresh summons to defendants No.2 and 3 for 21.09.2005.

This order was repeated on 21.09.2005. For some of the subsequent dates, summons were not received back served or unserved. As per order dated 24.03.2006, summons of defendant No.1 were received back unserved; whereas summons of defendants No.2, 3 and 6 were not received back. None of these orders reflect that plaintiffs ever filed the correct addresses of defendants No.1 and 6 as were ordered earlier by the Court. It is further revealed that on 24.03.2006, when summons of defendants No.1 were received back unserved and summons of defendants No.2, 3 and 6 were not received back, the counsel for the plaintiff simply made a request to send the summons through registered post to defendants No.1, 2, 3 and 6. The said request was allowed. The summons sent through registered post, as per order dated 09.05.2006, in respect of defendant No.1 were received with the report of incomplete address. Summons sent to defendants No.2 and 3 were received with the report that they were not residing at the given address; whereas RD of defendant No.6 was received with the report that she had left India. The Court ordered the plaintiffs to file the correct addresses of all these defendants No.1, 2, 3 and 6 and then to issue the fresh summons for 18.08.2006. However, just after three days, i.e. on 12.05.2006, an application was moved by the plaintiffs under Order V Rule 20 CPC and without ensuring the compliance of the previous order, as per which the plaintiffs had been asked to provide the correct addresses of defendants No.1, 2, 3 and 6, the Court ordered to summon defendant No.1 to 3 by way of publication in the newspaper *Bharat Desh Hamara* for 18.08.2006 on filing of the necessary publication charges; whereas defendant No.6 was directed to be summoned on filing of the correct addresses. As per the next order dated 18.08.2006, on the basis of service by way of publication, defendants No.1, 2 and 3 were proceeded ex parte. Various subsequent orders would reveal that correct address of defendant No.6 was never filed and as per order dated 09.08.2007, on an application moved under Order V Rule 20 CPC by the plaintiffs to serve the defendant No.6 by way of substituted service of Munadi, she was directed to be summoned accordingly for 01.10.2007 and then on the basis of munadi service of defendant No.6, she was proceeded ex parte on 01.10.2007.

9. All the above-said orders would clearly indicate that though the Court had received the reports that the given addresses of defendants No.1, 2, 3 and 6 were incorrect, but still the Court without ensuring the filing of the correct addresses by the plaintiffs, proceeded to serve them by way of substituted service of publication or munadi. There is nothing on record to show that any affidavit was filed by the plaintiffs that given addresses of the defendants were the correct addresses.

10.1 It has come in the testimony of PW1-Narinder i.e. defendant No.1 of the suit that he was doing service in Indian Military and that after his retirement from service in 1995, he settled in Delhi on the address as mentioned in his affidavit, which is H.N: 22, Second Floor, Block L, Anand Vihar, Delhi 110064. It is also testified by him that his family members were already residing at Delhi at this address prior to his retirement. He also stated that his brother i.e. husband of defendant No.2 and father of defendant No.3 was serving in a private firm at Ludhiana and both of them were residing with him at Ludhiana. Due to unfortunate death of his brother in 2001, the defendants No.2 and 3 settled in Chandigarh on the address given in the title of the affidavit i.e. House No.2598, Sector 44-C, Chandigarh. It is also testified by him that the newspaper *Bharat Desh Hamara*, in which the notices were published, has no circulation in the area. It is also testified by him that defendant No.6 was residing in USA for the last more than 15 years, which was very much in the knowledge of the plaintiffs, but still their correct addresses were not provided. Despite the fact that Intimation was received by the Court as per order dated 09.05.2006 that defendant N: 6 had left India, still she was served by way of *Munadi* service.

10.2 During his cross-examination, he denied the suggestion that he also used to reside in Village Fatehpur, though he admitted that he used to visit the said village at the place of his bhabhi Harbhajan Kaur. He denied that he ever refused to receive the summons. The said suggestion given on the part of the plaintiffs-respondents to PW1 is contrary to the record, as no report on the summons was ever stating that PW1-Narinder had refused to receive the summons. During his further cross-examination, PW1-Narinder

had disclosed that he came to know in November or December, 2009 about the case and the decision thereof. It is important to notice that no suggestion whatsoever was given to PW1-Narinder that address given by him in his affidavit i.e. of Delhi was incorrect or that he along with his family was not residing in Delhi ever-since his retirement in 1995 or that he used to reside at the address given in the plaint i.e. Village Fatehpur.

11. To the same effect is the testimony of PW2 Manjit Kaur i.e. Widow of Amarjit Singh, who was defendant No.2. In her testimony, though she stated that earlier she used to reside at the given address of House No.287, Sector 45-C, Chandigarh, but she clarified that she resided there only for 2-3 years and then had shifted to House No.2598, Sector 44-C, Chandigarh, which she had purchased. In cross-examination, she stated that she had been told about 4-5 years back by Arvinder Singh, the son of her *devrani* (sister in law) about the fact that a case had been instituted against her.

12. None of the plaintiffs-respondents to the application dared to enter the witness box to refute the testimonies of PW1 Narinder and PW2 Manjit Kaur regarding the correct addresses or that they had not been served in accordance with law. The plaintiffs-respondents did not even examine any other witness to prove the service of defendants No.1 to 3 & 6 in accordance with law.

13. It is, thus, clear that despite receipt of reports from time to time on the summons that defendants No.1 to 3 & 6 were not residing at the addresses given in the plaint, the Court preferred to serve them by way of substituted service of publication in a newspaper having local circulation only and by way of *munadi* and did not insist the plaintiffs to provide their correct addresses. Here itself, it may be noted that all the parties to the suit are closely related being the descendants of Amar Nath and it cannot be assumed that plaintiffs were not aware about the correct addresses of the unserved defendants.

14. Further, Rule 20 of Order V CPC provides the circumstances, in

which the substituted service can be ordered. This reads as under:

“20. Substituted service.—(1) *Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.*

(1A) *Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.*

(2) **Effect of substituted service.**—*Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.*

(3) **Where service substituted, time for appearance to be fixed.**—*Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.”*

15. Before deciding to proceed as per Rule 20 of Order V CPC, the first and foremost requirement is the satisfaction of the Court to have reason to believe that defendant is keeping out of the way for the purpose of avoiding service or that for any other such reason, the summons cannot be served upon him in the ordinary way.

16. In the case of ***Subhash and others Vs. Ram Kumar and others, 2023(1) RCR (Civil) 464***, it has been held by this Court that unless correct address was provided by the respondent, no order for effecting substituted service could have been passed by the trial Court through the process of publication. It was held further that once notices were received back unserved for want of correct address unless the correct address of defendant was provided by the plaintiff, no order for effecting substituted service could

have been passed by the trial Court through process of publication.

17. In the case of ***Shaminder Singh Bhatia and another Vs. Mr. Vishnu Bhagwan @ Balwan Singh, 2024(2) RCR (Civil) 483***, it has been held by Delhi High Court as under: -

“Order V Rule 20 stipulates that substituted service must be used as the final resort, only when the Court is satisfied that service in the ordinary sense cannot be completed and that there is reason to believe that the defendant is avoiding service. Mere assertion of the Plaintiff that the Defendant is avoiding service is not sufficient for effecting substituted service under Order V Rule 20, the onus is on the Plaintiff to prove that the Defendant was avoiding service. ***Sunil Gupta v. Asset Reconstruction Company, 2022 SCC Online Bom 2159- relying on Ganpatraj K Sanghvi v. Vishal Udyog, 2016 SCC Online Bom 5336*** Plaintiff cannot simply make a single attempt and resort to asking for leave to serve by substituted methods. Substituted service without any valid reason will go to the root of the matter and invalidate the service. In the present case, no cogent reasons were alluded to while applying for substituted service, right after a single attempt to conduct service. Therefore, such service cannot be held to be proper in light of established precedents.

18. It is thus clear that substituted service under Order V Rule 20 CPC must be used as a final resort after recording satisfaction by the Court that service in the ordinary sense cannot be completed and unless has reason to believe that defendant is avoiding service.

19. In the case of ***Mahabir Singh Vs. Subhash and others, 2008(1) RCR (Civil) 32***, it has been held by Hon’ble Supreme Court that when application moved by the defendant for setting aside *ex parte* order on the ground that there was no service of summons on him, it is for the respondent to establish as to when he came to know about the passing of the *ex parte* decree. Similar view was taken by this Court in the case of ***Mohinder Kaur Vs. Raj Mohinder Singh and others, 2010 (50) RCR (Civil) 894***.

20. However, in the present case, as already noticed that despite receipt of report on the summons that defendants No.1 to 3 & 6 were not

residing at the addresses given in the plaint, the Court did not insist on the plaintiffs to file their correct addresses and straightaway ordered their substituted service by way of publication in the newspaper or munadi.

21. Sub-Rule 1A of Rule 20 of Order V CPC also provide that newspaper, in which the notice is served should have circulation in the locality, in which the defendant is last known to have actually or voluntarily resided, carried on business or personally worked for gain. However, in the present case, defendant No.1 Narinder Singh was working in the Indian Military and it is only in 1995 that after his retirement, he started living in Delhi. There is no evidence that defendant No.1 Narinder Singh ever resided in Village Fatehpur, which was given in the plaint and therefore, there is clear violation of Order V Rule 20 CPC.

22. The perusal of the impugned orders as passed by the Courts below would indicate that the Courts were swayed by the fact that defendant No.1 Narinder Singh used to come to Village Fatehpur, to visit his *Bhabhi* Harbhajan Kaur. However, there is no evidence that plaintiff was ever told by Harbhajan Kaur regarding the suit, in case she was at all aware about the same and, therefore, simply on the basis of assumption, presumption and conjectures, the service or knowledge of defendant No.1 regarding the suit, cannot be presumed.

23. It is, thus, clear from the afore-said discussion that defendants No.1 to 3 & 6 were proceeded ex parte in clear violation of the provisions of law.

24. It may be noticed that although, defendants No.6 has neither moved any application under Order IX Rule 13 CPC nor has joined the present appeal, but it is noticed by the Court that she was resident of USA for the last more than 15 years, as has been testified by PW1 Narender and that she too was not served in accordance with law, as provided under Order V Rule 25 CPC and rather, she was served by way of *munadi* service, though despite repeated orders of the Court, the plaintiffs had not provided the correct address of defendant No.6. As such, it is held that even defendant N: 6 has

not been served as per law.

25. Proceeding further, the application under Order IX Rule 13 CPC moved by defendants N: 1 to 5 has been dismissed by the courts below mainly on the ground that the application was not moved within the prescribed limitation period of 30 days, as required under Article 123 of the Limitation Act, 1963.

26. Article 123 of the Limitation Act, 1963 reads as under: -

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
123. To set aside a decree passed ex parte or to rehear an appeal decreed or heard ex parte. Explanation.—For the purpose of this article, substituted service under rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not be deemed to be due service	Thirty days.	The date of the decree or where the summons or notice was not duly served, <u>when the applicant had knowledge of the decree.</u>

27. Perusal of the aforesaid Article would reveal that the period of 30 days for moving an application under Order IX Rule 13 CPC for setting aside the *ex parte* judgment & decree starts either from the date of decree; or where notice was not duly served, then from the date of knowledge. In the case of **Sri Lal Sah and others Vs. Gulabchand Sah (dead) through his LRs, 1993(1) RCR (Rent) 281**, it has been held by Hon’ble Supreme Court that prescribed limitation is 30 days for setting aside the *ex parte* order and that the starting point for computing period of limitation is the date of decree or where the summons or notice was not duly served, when the appellant had knowledge of the decree.

28. In the present case, as far as defendant No.4 and 5 are concerned, they had been served personally. Defendant No.5 i.e. minor even filed written statement through a Court guardian in which he set up two Wills, which could not have been possible, unless the Court guardian was provided necessary information by his mother i.e. defendant No.4. In these

circumstances, when defendant No.4 was personally served, due to which, she was proceeded ex parte, therefore, the appeal filed by said Harbhajan Kaur-respondent No.4 so as to set aside the ex parte judgment & decree, cannot be accepted, as the application under IX Rule 13 CPC was not moved by her within 30 days from the date of decree dated 4.11.2009. As such, appeal filed by her is hereby dismissed.

29. However, as far as respondents No.1 to 3 and 6 are concerned, their knowledge to the ex-parte decree is required to be seen, as to when they actually acquired the knowledge of the decree, which has been passed against them.

30. The term used in Article 123 of the Limitation Act is “the knowledge of the decree”. The question is as to what this term means? Whether it means simply the knowledge regarding pendency of some suit/ case or the decision thereof; or whether it means knowledge of the particular decree, which has been passed ex parte and against which, the application under IX Rule 13 CPC has been moved.

31. The said question was considered in depth by a Coordinate Bench of this Court in the case of **Harbhajan Singh Vs. Umrao Singh Dhillon, CR-1219-2015 decided on 05.01.2023**. After referring to Article 123 of the Limitation Act, 1963, it was observed as under: -

“17. From the reading of commentary on the Limitation Act, 1963 by Manohar and Chitley, 8th Edition, it is evident that the term “knowledge” means a certain and clear perception of a fact. The expression “knowledge of the decree” in the Article means knowledge not of a decree but of a particular decree which is sought to be set aside. The Patna High Court in **Batulan vs. S.K.Dvivedi 1954 SCC Online Patna 144/ ILR (1954) 33 Patna 1025** has explained the expression “knowledge of the decree”. In **Bapu Rao vs. Sukh Ram Sadhu AIR 1923, Bombay 193**, it was explained that the words of the Article mean something more than mere knowledge that a decree had been passed in some suit, in some court against the applicant. The applicant must have knowledge not merely that a decree has been passed by a court

against him but that a particular decree has been passed against him in a particular court in favour of a particular person for a particular sum or granting certain relief. Subsequently, this expression came up for consideration before the Hon'ble Supreme Court in ***Panna Lal vs. Murari Lal (dead) by LRs, AIR 1967 Supreme Court 1384***. While interpreting Article 164 of the Indian Limitation Act, 1908, the Court interpreted the expression "knowledge of the decree" in the following manner:-

"(4) In ***Pundlick Rowji v. Vasantrao Madhav- rao, (1909) 11 Bom LR 1296*** Davar, J., held that the expression "knowledge of the decree" in Art. 164 means knowledge not of a decree but of the particular decree which is sought to be set aside, a certain and clear perception of the fact that the particular decree had been passed against him. On the facts of that case, Davar, J., held that a notice to the defendant that a decree had been passed against him in the High Court suit No. 411 of 1909 in favour of one Pundlick Rowji with whom he had no dealings was not sufficient to impute to him clear knowledge of the decree in the absence of any information that the decree had been passed in favour of Pundlick Rowji as the assignee of a promissory note which he had executed in favour of another party. This case was followed by the Calcutta High Court in ***Kumud Nath Roy Chowdhury v. Jotindra Nath Chowdhury, (1911) ILR 38 Cal 394*** at p. 403. In ***Bapurao Sitaram Kar- markar v. Sadbu Bhiva Gholap, ILR 47 Bom 485: (AIR 1923 Bom 193)*** the Bombay High Court held that the evidence of two persons, who had been asked by the plaintiff to be the defendant about the decree and to settle the matter was not sufficient to impose knowledge of the decree on the defendant within the meaning of Art. 164. C. J., said: Macleod,

"We think the words of the article mean something more than mere knowledge that a decree had been passed in some suit in some Court against the applicant. We think it means that the applicant must have knowledge not merely that a decree has been passed by some Court against him, but that a particular decree has been passed to against him in a particular Court in favour of a particular person for a particular sum. A judgment-debtor is not in such a favour able position as he used to be when he had thirty days from the time when execution was levied against him. But we do not think that the Legislature meant to go to the other extreme by laying

down that time began to run from the time the judgment- debtor might have received some vague information that a decree had been passed against him."

This decision was followed in **Batulan v. S. K. Dwivedi, (1954) ILR 33 Pat 1025** at pp. 1050-8 and other cases. We agree that the expression "knowledge of the decree" in Art. 164 means knowledge of the particular decree which is sought to be set aside. When the summons was not duly served, limitation under Art. 164 does not start running against the defendant because he has received some vague information that some decree has been passed against him. It is a question of fact in each case whether the information conveyed to the defendant is sufficient to impute to him knowledge of the decree within the meaning of Art. 164. The test of the sufficiency is not what the information would mean to a stranger, but what it meant to the defendant in the light of his previous dealings with the plaintiff and the facts and circumstances known to him. If from the information conveyed to him the defendant has knowledge of the decree sought to be set aside, time begins to run against him under Art. 164. It is not necessary that a copy of the decree should be served on the defendant. It is sufficient that the defendant has knowledge of the material facts concerning the decree, so that he has a clear perception of the injury suffered by him and can take effective steps to set aside the decree."

18. A similar view has been expressed by the Punjab and Haryana High Court in **Smt. Kamal B vs. Jasmal, 1981 Punjab Law Reporter 482**.

19 Keeping in view the aforesaid interpretation, it is evident that a mere knowledge of the fact that a decree has been passed by some court against a person is not sufficient. The limitation for filing an application for setting aside the ex-parte decree is required to be calculated from the date on which the applicant has knowledge of the fact that a particular decree has been passed against him in a particular court in favour of a particular person. Unless, the knowledge of the decree is complete, the period of limitation cannot begin to run. A party praying to set aside an ex-parte decree cannot be held to have had the knowledge of the decree from the mere fact that he has been told that a decree has been passed against him in a suit without disclosing the specific details like the date of decision, title of the suit and the court which passed the decree.

32. The view taken by Hon'ble Supreme Court in ***Panna Lal vs. Murari Lal (dead) by LRs, AIR 1967 Supreme Court 1384*** was also later on followed in ***Sneh Gupta Vs. Devi Sarup and others***, Law Finder Doc ID #187616. Same view has also been taken by this Court in ***Vidya Sagar Vs. Mam Chand and others***, Law Finder Doc ID# 204689; ***Baldev Singh Vs. Labh Singh***, Law Finder Doc ID #63001; ***Amarjeet Singh and another Vs. Balwant Singh***, Law Finder Doc ID# 18847 and ***Bhairo Parshad Vs. Karam Chand***, Law Finder Doc ID # 18711.

33. In the case of ***Bhagmal and others Vs. Kunwar Lal and others***, Law Finder Doc ID #213421, it has been held by Hon'ble Supreme Court that even if an application for condonation of delay is not moved in an application under Order IX Rule 13 CPC, but the said application under Order IX Rule 13 CPC itself had all the ingredients of application for condonation of delay as to when the defendants/applicants came to know about the decree and moved the application within 30 days, which are sufficient, the limitation must be deemed to have started from the date of knowledge of the *ex parte* decree. It will be apt to reproduce the observations made by Hon'ble Supreme Court in this regard.

"8. Shri Acharya, learned Counsel appearing on behalf of F the respondents tried to argue on the basis of Article 123 of the Limitation Act. However, in our opinion, Article 123 cannot be, in the facts of this case persuade us to take the view that the limitation actually started from the date of knowledge, as the appellants/defendants had no notice of the decree or the proceedings which the respondents had promised to terminate. Shri Acharya then tried to persuade us by suggesting that unless the application was filed for condonation of delay, the court had no jurisdiction to entertain the application for setting aside the decree. He has based this contention on the basis of a reported decision of this Court in ***Sneh Gupta Vs. Devi Sarup & Ors. [2009 (6) SCC 194*** and more particularly, the observations made in para 70 therein. In our opinion, the facts of this case were entirely different, as it was held in that case that the appellant had knowledge of passing of the compromise decree and yet she had not filed the application for condonation of delay. That is not the situation here Even in this case, there is a clear cut

observation in para 57, as follows: -

"However, in a case where the summons have not been served, the second part shall apply."

The Court was considering Article 123 of the Limitation Act. In our opinion, in this case, the limitation must be deemed to have started from the date when the appellants/defendants came to know about the decree on 22.6.1988. An application under Order IX Rule 13 was filed within 30 days from that date and, therefore, it is clear that it was within time. At any rate, even if it held that the limitation started from the date of decree, there was a satisfactory explanation of the delay if any."

34. In the present case, as per the testimony of PW1 Narender Singh, he had come to know about the decision of the suit in November/December 2009. However, there is no suggestion to him that he had come to know about decree in the suit, which was sought to be set aside. As has held by Hon'ble Supreme Court, the knowledge of the decree means that the applicant/defendant had knowledge of the fact that a particular decree has been passed against him in a particular court in favour of a particular person. Unless, the knowledge of the decree is complete, the period of limitation cannot begin to run. There is no such evidence to that effect. Simply because he used to come to the village in Fatehpur to see his bhabhi, does not mean that he had acquired knowledge of the decree passed against him.

35. On account of entire discussion as above, it is held that the orders passed by the Courts below, dismissing the application under Order IX Rule 13 CPC cannot be sustained. Both the orders are hereby set aside. The appeal as filed by defendants N: 1 to 3 is hereby accepted.

36. The matter is remanded back to the concerned trial Court so as to provide opportunity to the applicants-defendants No.1 to 3, whose appeal is being accepted, to file the written statement and then proceed further in accordance with law. It has already been noticed that although defendant No.6 Gurmeet Kaur was also not served in accordance with law and was

wrongly proceeded against *ex parte* but she has not come forward to move any application under Order IX Rule 13 CPC for setting aside the *ex parte* judgment and decree against her.

37. The parties through their respective counsels i.e. plaintiffs and defendants No.1 to 3, are directed to appear before the trial Court concerned on 02.09.2024, on which date the Court shall fix the date for filing of the written statement by defendants No.1 to 3.

20.08.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes