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

(125)

CR-93-2025

Date of decision:- 15.01.2025

Ram Singh**... Petitioner****Versus****Banwari and others****... Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. B.S.Mittal, Advocate
for the petitioner.

SUVIR SEHGAL, J. (ORAL)

1. This petition has been filed under Article 227 of the Constitution of India for setting aside order dated 29.11.2024, Annexure P-5, passed by the learned Additional Civil Judge (Senior Division), Sirsa, whereby a civil suit has been dismissed under Order 9 Rule 5 CPC.
2. Counsel for the petitioner-plaintiff No.3 submits that a suit for declaration and possession was filed to the effect that the plaintiffs are the owners in possession along with some proforma respondents to the extent of 1/4th share, in equal share, to the suit property. He states that 78 defendants were impleaded as parties to the suit and service was being effected upon them by adopting the modes permissible in accordance with law. He submits that notices to some of the defendants were ordered to be served by way of publication vide order dated 04.10.2024, Annexure P-3, passed by the Trial Court, but as there was a delay in depositing of the



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publication charges, Trial Court dismissed the suit qua all the defendants vide the impugned order. He has placed reliance upon the judgment of the Delhi High Court in *New Bank of India Versus Sunil Dua, 1988 (2) CurCC 1* to submit that the power is to be exercised only in cases of persistent and gross negligence of the plaintiff in depositing the requisite charges for serving the summons on the defendants.

3. Having heard counsel for the petitioner, this Court is of the view that the Trial Court has adopted a highly technical approach. Delay in deposit of publication charges by a few days cannot be said to be so gross as to invite the dismissal of the suit under Order 9 Rule 5, CPC. As noticed by the Delhi High Court in *New Bank of India's (supra)* that in a number of case the litigants or their agents are negligent in prosecuting the suits and fail to pay the process fee inspite of various opportunities. In such cases, the Court has no option, but to make an order dismissing the suit. However, this power should not be exercised casually or in routine, but only in cases where Court finds persistent or gross negligence. The present case is not a case of persistent or gross negligence.

4. Power vested in the Court under Order 9 Rule 5, CPC is discretionary. Dismissal of a suit and that too against all the defendants, even though a number of them have served, has resulted in defeating and subverting service. Therefore, impugned order cannot be sustained.

5. Without advertng to the merits of the claim raised in the suit or calling upon the respondents as that is likely to delay the proceedings, impugned order, Annexure P-5, is set aside. Civil Suit is ordered to be

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restored to its original number and is directed to be taken up on 19.03.2025.

Petitioner shall appear before the Court on the date fixed for further proceedings in accordance with law.

6. Petition is disposed off.

(SUVIR SEHGAL)
JUDGE

15.01.2025
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No