



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

**Civil Revision No. 2626 of 2018 (O&M)
Date of Decision: 26.11.2025**

Afzal and another

..... Petitioners

Versus

Smt. Gurjeet Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Prem Chand Chaudhary, Advocate
for the petitioners-defendants.

Mr. Robin Dutt, Advocate with
Mr. Kartar Singh, Advocate
for the respondent-plaintiff.

HARKESH MANUJA, J. (ORAL)

The petitioners-defendants, by way of present revision petition, seek setting aside of an order dated 14.03.2018 passed by the Court of Additional District Judge, Yamuna Nagar at Jagadhri (**hereinafter referred to as Lower Appellate Court**), whereby an appeal preferred against the order dated 24.05.2016 passed by the Court of Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri (**hereinafter referred to as “trial Court”**) dismissing their application, filed under Order IX Rule 13 of The Code of Civil Procedure, 1908 (**for short “CPC”**), was dismissed.

FACTS

[2] Briefly stating, based on an agreement to sell dated 01.06.2007, respondent-plaintiff filed a suit for possession by way of specific performance against the petitioners-defendants on 18.09.2009,

wherein the petitioners-defendants were proceeded against ex parte on 26.03.2010 (Annexure P-4). Later, an ex parte judgment and decree qua possession by way of specific performance was passed in favour of respondent-plaintiff on 10.10.2013 (Annexures P-5 & P-6) by the learned trial Court.

[3] Subsequently, the petitioners-defendants preferred an application under Order IX Rule 13 CPC with a prayer for setting aside of the ex parte judgment and decree. The application was filed on 09.12.2013 (Annexure P-8). The said application was opposed by the respondent-plaintiff. After framing the issue(s) and affording the opportunities to the parties, learned trial Court vide order dated 24.05.2016 dismissed the application preferred at the instance of petitioners.

[4] Aggrieved thereof, the petitioners preferred an appeal, however, the same was also dismissed by the learned First Appellate Court vide order dated 14.03.2018. Hence, the present revision petition.

CONTENTIONS

ON BEHALF OF THE PETITIONERS-DEFENDANTS

[5] Impugning the aforesaid orders dated 14.03.2018 & 24.05.2016 passed by the Courts below, learned counsel for the petitioners-defendants submits that the present is a case of no service. While referring to the service report dated 13.10.2009, learned counsel for the petitioners points out that the service was never effected upon the petitioners as the summons were handed over to one Tofik, who happened to be the brother of Afzal-petitioner No. 1 and son of Smt. Maniza-petitioner No. 2, and thus, there was no compliance of Order V Rule 15 CPC. He also points out that the summons were served upon the brother/son of petitioners, namely, Tofik

on 13.10.2009 for the next date of hearing, i.e. 14.10.2009 and thus, no sufficient time was even afforded to the petitioners to put in appearance before the learned trial Court and defend themselves.

Learned counsel further submits that even no advocate was engaged by the petitioners-defendants so as to put in appearance before the learned trial Court. He contends that Sh. Rajan Bhatia, Advocate, appeared before the trial Court on 14.10.2009 and filed his Memo of Appearance; however, later he chose not to appear resulting into the petitioners-defendants getting proceeded against ex parte, although he was never even engaged by the petitioners-defendants. He thus submits that the impugned orders are liable to be set aside.

ON BEHALF OF THE RESPONDENT-PLAINTIFF

[6] On the other hand, learned counsel for the respondent-plaintiff submits that the petitioners-defendants were duly served through their brother/son-Tofik and the said fact was duly admitted by petitioner No. 1-Afzal, while appearing as AW-1. In such circumstances, it was a case of valid service under the provisions of Order 5 Rule 15 CPC. He also points out that since the petitioners-defendants appeared through a counsel who filed Memo of Appearance, it implies that they were fully conscious of the pendency of the proceedings and thus, should have remained vigilant enough to enquire about the outcome of the suit and as such, the impugned order(s) calls for no interference.

DISCUSSION AND REASONING

[7] After hearing learned counsel for the parties and gone through the paper-book / record, I find substance in the submission(s) made on behalf of the petitioners-defendants.

[8] Before proceeding further, it may be relevant to take note of the Order V Rule 15 CPC, which is extracted hereunder:-

“
ORDER V
Issue and service of summons
Issue of Summons
[15. Where service may be on an adult member of defendant's family.— Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on his at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.
Explanation. —A servant is not a member of the family within the meaning of this rule.]”

A perusal of the above shows that the defendants can be served through adult member of his/her family in case he is absent from his residence at the time when the service is sought to be effected

AND

there is no likelihood of his being found at the residence within a reasonable time.

[9] In the present case, a perusal of report dated 13.10.2009 furnished by the Process Server though records that the petitioners-defendants were not found at their house at the time when the service was sought to be effected upon them, however, it was never recorded by the Process Server that there was no likelihood of they being found at their residence within a reasonable time. In such circumstances, stipulated condition laid down under Order V Rule 15 of CPC was never satisfied and as such, the summon served by the Process Server upon the brother/son of

petitioners-defendants, was not to be treated as valid service in terms of Order V Rule 15 CPC, even though the factum of service of summon upon his brother was duly admitted by Afzal-petitioner No. 1, while appearing as AW-1, especially when it has also come on record in the deposition of Afzal-petitioner No. 1 that both the brothers were residing separately.

[10] Furthermore, a perusal of record shows that the service was effected upon the brother/son of the petitioners-defendants on 13.10.2009 for the date of hearing being 14.10.2009, which clearly shows that no sufficient time was ever afforded to the petitioners-defendants so as to enable them to appear and defend themselves on the date fixed and the same was thus in violation of Order V Rule 6 CPC, which reads as under:-

“ ORDER V

Issue and service of summons

Issue of Summons

6. Fixing day for appearance of defendant.—The day³ [under sub-rule (1) of rule 1] shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.”

[11] Moreover, a perusal of the record shows that on 14.10.2009, one Sh. Rajan Bhatia, Advocate, appeared on behalf of the petitioners-defendants through Memo of Appearance. Thereafter, on the subsequent hearings, Mr. Rajan Bhatia, Advocate, failed to appear and consequently, the petitioners-defendants were proceeded against *ex parte* on 26.03.2010. Record also shows that no Power of Attorney (*Vakalatnama*) was ever furnished by any Lawyer / Advocate on behalf of the petitioners-defendants

before the learned trial Court. This fact substantiates the plea raised by the petitioners-defendants that Mr. Rajan Bhatia, Advocate was never authorised by them to put in appearance on their behalf before the learned trial Court.

[12] Be that as it may, as per the provisions of Order III Rule 4 CPC, which is extracted hereinafter, no pleader can put in appearance for and on behalf of any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorized by or under a power of attorney to make such appointment. In the present case, a perusal of record reflects that no such authority in writing was ever issued by the petitioners-defendants in favour of Mr. Rajan Bhatia, Advocate, so as to enable him to put in appearance on their behalf before the learned trial Court.

“
ORDER III
Recognized Agents and Pleaders

4. Appointment of pleader.—(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorised by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be 3[filed in Court and shall, for the purposes of sub-rule (1), be] deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

⁴[Explanation. —For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,—

(a) an application for the review of decree or order in the

suit,

(b) an application under section 144 or under section 152 of this Code, in relation to any decree or order made in the suit,

(c) an appeal from any decree or order in the suit, and

(d) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.]

⁵[(3) Nothing in sub-rule (2) shall be construed—

(a) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(b) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (1).]

(4) The High Court may, by general order, direct that, where the person by whom a pleader is appointed is unable to write his name, his mark upon the document appointing the pleader shall be attested by such person and in such manner as may be specified by the order.

(5) No pleader who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed in court a memorandum of appearance signed by himself and stating—

(a) the names of the parties to the suit,

(b) the name of the party for whom he appears, and

(c) the name of the person by whom he is authorised to appear:

Provided that nothing in this sub-rule shall apply to any pleader engaged to plead on behalf of any party by any other pleader who has been duly appointed to act in Court on behalf of such party.]”

[13] Additionally, having perused the impugned order(s), it is apparent that the aforesaid relevant aspects were neither considered nor dealt

with in proper perspective by the Courts below while adjudicating upon the application preferred under Order IX Rule 13 of CPC at the instance of petitioners-defendants.

DECISION

[14] In such view of the matter, the impugned order(s) dated 14.03.2018 & 24.05.2016 passed by the Courts below, are hereby set aside. Consequently, the application filed at the instance of petitioners-defendants for setting aside of the *ex parte* decree is hereby allowed. The parties are directed to appear before the trial Court on **15.12.2025** and the trial Court is requested to proceed further in the matter as per law.

[15] **Disposed off** accordingly.

[16] Pending miscellaneous application(s), if any, shall also stand disposed off.

November 26, 2025
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No