

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

**Reserved on 27th of November, 2025
Pronounced on 23rd of December, 2025
Uploaded on 23rd of December, 2025**

Whether only operative part of the judgment is pronounced? **No**
Whether full judgment is pronounced? **Yes**

CR No.3598 of 2015

Dr. S.P. DhawanPetitioner

Versus

Kay Gee Finances Thr. its Proprietor and othersRespondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R. Kartikeya Iyer, Advocate
for the petitioner.

Mr. Sarju Puri, Senior Advocate with
Ms. Anjila Guru, Advocate
for the respondents.

PANKAJ JAIN, J.

Present revision petition is directed against order dated 12.03.2015 whereby order dated 31.03.2010 passed by Civil Judge (Junior Division), Chandigarh dismissing the application filed by the petitioner, under Order IX Rule 13 CPC read with Order XXII Rule 4A CPC for setting aside *ex parte* judgment and decree dated 05.02.2002 passed in Civil Suit No.197/06.07.1994, has been dismissed with costs.

2. The *lis* relates to a residential property bearing House No.1858 situated in Section 22-B, Chandigarh, which was admittedly owned by Ramji Dass son of Jiwan Dass, predecessor-in-interest of the petitioner.

3. Respondent i.e., Kay Gee Financiers filed suit for possession by way of specific performance w.r.t. the suit property propounding agreement to sell, dated 14.05.1991 claimed to have been executed by Ramji Dass in his favour. As per respondent/plaintiff, Ramji Dass was paid earnest money of Rs.1,00,000/-. Balance consideration of Rs.1,00,000/- was to be paid within 20 months of the agreement. As per the suit, balance sale consideration of Rs.1,00,000/- was also paid to Ramji Dass in cash vide receipt, dated 18.09.1991 and the documents w.r.t. property were handed over to the plaintiff by Ramji Dass. Plaintiff in his suit claimed that Ramji Dass having failed to execute the sale deed in his favour, plaintiff is entitled for decree of specific performance.

4. Ramji Dass was served. He filed his written statement. Suit was put to trial. During the pendency of the suit Ramji Dass died on 19.06.1996. An application was filed by the plaintiff for bringing on record legal heirs of Ramji Dass. The same was allowed vide order dated 25.03.1998. Legal heirs of Ramji Dass i.e., the present petitioner and proforma respondents No.2 to 6 were impleaded as defendants No.1 to 6. The suit was ultimately decreed vide judgment and decree dated 05.02.2002.

5. Present application was moved by the petitioner under Order IX Rule 13 CPC read with Order XXII Rule 4A read with Section 151 CPC seeking setting aside of *ex parte* judgment and decree dated 05.02.2002. As per the applicant, even some of the legal heirs of Ramji Dass were brought on record, but no notice was ever sent to effectuate their service. They never

authorized any advocate to appear on their behalf. During the pendency of the suit, Lajwanti widow of Ramji Dass was also died on 26.05.2000. Her death was never informed to the court. Applicant thus claimed that the decree was passed against a dead person and even execution was being proceeded against a dead person without effecting any service on the legal heirs of Ramji Dass. Applicant claims that he came to know about the execution proceedings just a day prior to the filing of application. As per the applicant, plaintiff had an ulterior motive to seek proceedings at the back of the defendants. The suit property was mortgaged with State Bank of Patiala. No sale/attachment could be ordered as the same was the only residential property of late Ramji Dass and was thus exempted under Section 60(1)(ccc) of CPC from attachment. State Bank of India, the mortgagee, had already proceeded against in a civil suit filed before High Court at Shimla. The suit was decreed. In execution thereof, the suit property was attached and was put to auction. The suit property was mortgaged on 06.02.1990 i.e., prior to the date of agreement to sell i.e., 14.05.1991. After auction, the auction purchaser was put in possession and the sale proceeds were deposited with the bank.

5.1. It is only after the plaintiff obtained *ex parte* order dated 20.11.2004 for registration of sale deed in execution of the *ex parte* decree that the applicant(s) applied for setting aside of *ex parte* order. The applicants filed objections against the execution. It is only thereafter that as

per the legal advice the present application was moved for setting aside of *ex parte* decree, on 19.02.2005

6. The Courts below held that the applicant admittedly moved objections in execution on 25.11.2004 and admitted that he came to know regarding *ex parte* order dated 20.11.2004 on 24.11.2004. The present application was instituted only on 19.02.2005 i.e., beyond 30 days of the knowledge of *ex parte* judgment and decree. Thus, the application having been filed beyond the period of limitation of 30 days as contemplated under Article 123 of the Limitation Act, 1963, the same deserves to be dismissed.

7. The applicant preferred appeal against order. The same has been dismissed by the Appellate Court as well.

8. Counsel for the petitioner has assailed the findings recorded by the Courts below. He submits that the delay is attributable to the legal advice. The petitioner came to know of *ex parte* execution proceedings on 20.11.2004. Immediately, an application was filed seeking setting aside of the same. Objections were also filed in the execution. It is only when the petitioner was advised by his counsel to move the application, the present application was moved. Reliance is being placed upon **Dwarika Prasad (D), thr. LRs vs. Prithvi Raj Singh, 2024 SCC OnLine SC 3828** to submit that where the conduct of the applicant shows his *bona fide*, hyper technical view should not be taken. Further reliance is being placed ratio of law laid down in the case of **Bhagmal and others vs. Kunwar Lal and others, (2010) 12 SCC 159, Bhanwar Lal Dugar and others vs. Bridhichand**

Panna Lal and others, (2010) 12 SCC 164, Major Singh vs. Prem Kumar, (2023) 4 RCR (Civil) 296 and Bhupinder Kaur vs. Sukhminder Singh and others, 2016 SCC OnLine P&H 5738.

9. Per contra, Senior Counsel Mr. Sarju Puri, has drawn attention of this Court to the pleadings raised in the application filed under Order IX Rule 13 CPC, to submit that the case of the applicant is not that the application was filed with delay due to lack of proper legal advice. Rather the applicant specifically pleaded that he came to know about the execution proceedings only a day prior to filing of the present application. He submits that the application was supported by an affidavit of the petitioner. In the affidavit, he stated on Oath that the statement of facts made in Para No. 1 to 13 are true. It is only at the time of leading evidence that the petitioner became wiser. He submits that no explanation worth a word was offered in the application to make out a sufficient cause for condonation of delay. Rather the applicant tried to make out a false case. It is only after the respondent/plaintiff in the reply pointed out towards the falsity of the claim that an attempt was made while leading evidence to cover up the same. He submits that the Courts below have rightly non-suited the petitioner/applicant and have rightly dismissed the application filed under Order IX Rule 13 CPC.

10. I have heard counsel for the parties and have carefully gone through records of the case.

11. It is matter of record that after Ramji Dass died, his LR's were brought on record by the plaintiff. However, no notice was ever served upon them. It is also equally true that the limitation to file the present application under Order IX Rule 13 CPC, is governed by Article 123 of the Limitation Act, 1963. The same prescribes 30 days limitation to file an application. The limitation has to commence from the date of knowledge of *ex parte* decree. While moving application, the applicant-petitioner specifically pleaded as under:

“5. That in fact, no service was effected on the defendants and the applicant was not aware of any such proceedings. Only yesterday, the defendant came to know about the execution proceedings and for the direction that the Reader of the court is authorized to get the sale deed registered.”

12. Mr. Kartikeya does not dispute that the said averment made in the application has been found to be a patent lie.

13. In these circumstances, this Court finds that the proposition sought to be canvassed by Mr. Kartikeya relying upon in the case of **Dwarika Prasad (D), thr. LR's vs. Prithvi Raj Singh, Bhagmal and others vs. Kunwar Lal and others, Major Singh vs. Prem Kumar, and Bhupinder Kaur vs. Sukhminder Singh and others** (supra), cannot be looked into as the same is not the pleaded case of the applicant/petitioner. The oral evidence in the absence of pleadings cannot be relied upon.

14. In view of above, this Court finds that the present revision petition sans merit and the same deserves to be dismissed.
15. Ordered accordingly.

December 23, 2025

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(Pankaj Jain)

Judge