

2025:PHHC:151201



CR No.7487 of 2018 (O&M)

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

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CR No.7487 of 2018 (O&M)
Date of Decision: 03.11.2025
.....Petitioner

HARWINDER SINGH
Vs
KAPOOR SINGH

....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ajay Pal Singh Rehan, Advocate
for the petitioner (through V.C.).

Mr. L.M. Gulati, Advocate for the respondent.

HARKESH MANUJA, J. (Oral)

[1]. By way of present revision petition, challenge has been laid to the orders dated 18.05.2017 (Annexure P-2) and 26.04.2018 passed by the learned Courts below, whereby the application preferred at the instance of petitioner under Order 9 Rule 13 of CPC seeking setting aside the ex-parte judgment and decree dated 03.09.2014 stands dismissed.

[2]. Briefly stating, respondent filed a suit of permanent injunction against the petitioner-defendant No.1 as well as one Gurjit Singh. In the said suit, the petitioner-defendant No.1 was served through her daughter namely Simarjit Kaur on 14.01.2014, who was major at the relevant time. The service report in this regard is extracted hereunder:-

“Sir,

It is requested that my father Harwinder Singh is residing at Mumbai and he visits home once or twice in a year.

Sd./- Simerjit Kaur d/o Harwinder Singh.



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It is requested that I reached village Bhangwan for effecting service of summons but Harwinder Singh did not meet at home, his daughter namely Simerjit Kaur met at home, who orally stated that her father resides at Mumbai and rarely comes here. She has given in writing also. Gurjit Singh was present at home but he refused to receive the summons after reading the same and copy of the plaint, he did not give anything in writing. Affixation of copy of summons has been made. Report submitted.

Sd./- Narinder Kumar Process Server, 14.01.2014.

Thereafter Gurjit Singh went somewhere on his motorcycle PB 02CD 1168.

Witness: L.T.I. Chowkidar Rattan Singh son of Gura Singh Village Bhagwan.

I, solemnly affirm and declare that my report is true and correct.

Sd./- Narinder Kumar Process Server, 14.01.2014

Affidavit attested.

Sd./- Civil Judge, Sr. Div. ASR.”

[3]. Having failed to appear before the learned Trial Court despite due service, the petitioner/defendant No.1 was proceeded against ex-parte vide order dated 05.02.2014. Subsequently the suit filed at the instance of the respondent-plaintiff was decreed ex-parte vide judgment and decree dated 03.09.2014. The relevant extract thereof is extracted hereunder:-

“ It is ordered that the suit filed by the plaintiff is hereby decreed ex-parte in favour of plaintiff by granting decree for permanent injunction, thereby restraining the defendants from Interfering with the peaceful, physical, exclusive possession of the plaintiff or from dispossessing him from the property marked as A.B.C.D. shown in red colour in the site- plan which falls in Kh. 46R/25; khatauni 147 khewat 69 jamabandi for year 2011-2012 and same is bounded as by East: property of kapoor Singh, West: road, North: land of Gurjeet Singh, South, property of Baldev Singh



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as situated at village Bhangwan H.B 326 sub tehsil Majitha, tehsil / District Amritsar illegally, forcibly, unlawfully without due course of law and in any manner whatsoever. There shall be no order as to cost.”

[4] On 09.12.2014, the petitioner/defendant No.1 moved an application invoking Order 9 Rule 13 CPC read with Section 151 CPC seeking setting aside the ex-parte judgment and decree dated 03.09.2014 while alleging that no valid service was ever effected upon the petitioner/defendant No.1 in the suit by the learned Trial Court before proceedings against him as ex-parte. The said application was opposed at the instance of the respondent/plaintiff and the was ultimately dismissed by the learned Trial Court vide order dated 18.05.2017. Aggrieved thereof, petitioner/defendant No.1 preferred an appeal, however the same came to be dismissed by the learned Addl. District Judge, Amritsar on 26.04.2018. Hence the present revision petition has been filed assailing both the aforementioned orders.

[5]. I have heard learned counsel for the parties and perused the paper book. I am unable to find substance in the submissions made on behalf of the petitioner.

[6]. A perusal of the record shows that in the present case, petitioner/defendant No.1 was served on 14.01.2014 through her daughter namely Simarjit Kaur, who was major at the relevant time was admittedly residing with him. Though, it was stated by the daughter that her father i.e. the petitioner used to reside in Bombay, however, the said averment by her has not been substantiated even now by the petitioner by giving any specific details about his address in Bombay (Mumbai). However, the daughter was not in a position to inform as to when her father was likely to visit his permanent abode at Amritsar. Furthermore,



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the petitioner was proceeded against ex parte in the suit on 05.02.2014, based on the aforementioned report, however, he never cared to even inquire about the suit for long but only applied for of setting aside the ex parte proceedings after passing of the judgment against him on 03.09.2014. Be that as it may, the petitioner in cross-examination even went on to admit his residential address as 'Bhangwan, Kotla Gujran, Amritsar' and the same was even mentioned on his 'Aadhar Card' as well. Thus, the service effected upon the major daughter of the petitioner needs to be treated as a valid service in terms of the provisions of Order 5 Rule 15 CPC. For reference the provisions thereof are recapitulated hereunder:-

“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.”

[7]. Moreover, the daughter of petitioner/defendant No.1 namely Simarjit Kaur never appeared in the witness box to controvert the factum of service effected upon her by the process server on 14.01.2014.

[8]. In the aforesaid facts and circumstances, this Court finds no illegality or perversity with the reasoning recorded by the learned Courts below while dismissing the application filed under Order 9 Rule 13 of CPC at the instance of the petitioner/defendant No.1. Accordingly, the present revision petition being devoid of merits is resultantly dismissed.

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[9]. Pending application(s), if any shall also stand disposed of.

November 03, 2025

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No