



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

242

FAO-3444-2015 (O&M)

Date of decision : 12.11.2025

Satnam Singh deceased through his LRs

..... Appellant

versus

Nachhattar Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. D.S. Malwai, Advocate
for the appellants.

Mr. Mandeep Singh, Advocate
for respondent No.1.

PANKAJ JAIN, J. (Oral)

1 Challenge is to the order dated 16.03.2015 passed by Additional District Judge Sri Mukstar Sahib whereby application filed by the appellant under Order XLI Rule 21 read with Order IX Rule 13 read with section 151 CPC stands rejected.

2. The appeal was preferred by the respondent-Nachhattar Singh impleading legal representatives of Satnam Singh-defendant No.1. The memo of parties reads as under:

“Nachhattar Singh son of Harbans Singh son of Dalel Singh
resident of village Abul Khurana, District Sri Muktsar Sahib.

Appellant

Versus

1. Satnam Singh (deceased through his L.Rs:-

A) Mehma Singh son of Satnam Singh son of Balwant Singh

B) Jaspal Kaur daughter of Satnam Singh son of Balwant Singh (wife of Lachhman Singh son of Hari Singh) resident of Rameana.

C) Kiranjit Kaur daughter of Satnam Singh son of Balwant



Singh (wife of Gurjit Singh son of Bhag Singh) resident of village Sukhna Ablu, District Sri Muktsar Sahib,

2. Gurcharan Singh son of Balwant Singh son of Dalel Singh resident of village Abul Khurana, District Sri Muktsar Sahib.

Respondents”

3. From the record, it is discernible that notices were issued to the applicants (respondents in the appeal) for 18.07.2000. The service report reads as under-

“No.39 dt 22.4.2k

Sh. Satnam Singh PS

To comply before 11-5-2K

Sd/- NN

Xxx

Sd/- Mehma Singh son of Satnam Singh

Sir,

It is submitted that after visiting the spot I enquired about Japal Kaur and Kiranjit Kaur, but they are residing outside. Mehma Singh has been got served personally by giving him copy of summon and copy of the suit. Sh. Gurcharan Singh @ Gurbachan Singh has flatly refused from service. Sd/- Satnam Singh 23.4.2000.

Note: in the summons writing be made legible.

Sd/- Satnam Singh.

Not residing B& C

In person 1A

Refusal No.2

Naib Najar ACJ SD Civil (Malout) 25.4.2000

Note: Affidavit of Satnam Singh dt. 25.4.2000”

4. On the basis of the aforesaid report tendered by the process server, Appellate Court ordered service of the respondent in appeal by way of proclamation. Notices were published in the Daily Newspaper Chardi Kala, Patiala dated 18.07.2000. The LRs of Satnam Singh were proceeded against ex-parte. The said order finally led to passing of ex-parte judgment and decree dated 10.11.2001. It is only in June 2012 that



the decree holder filed execution. Thereafter, present application was moved on 01.05.2013, wherein the applicant/appellants imparted the knowledge to one Balkar Singh s/o Mohinder Singh pleading as under:-

“That the applicants/respondents came to know about the judgment & decree from one Gurbinder Singh s/o Kultar Singh and Balkar Singh son of Mohinder Singh residents of Village Ablu Khurana a 10 days back, when they informed the applicants/respondents that they have heard from Nachhattar Singh that there is decree for possession in his favour, passed by the Ld. Addl. District Judge, Sri Muktsar Sahib and then the applicants/respondents came to know about the judgment & decree dated 10.11.2001.”

5. The application has been dismissed by the Appellate Court observing as under:-

“That the Ld. Court has not satisfied about the fact that the service of these respondents would not be effected by way of personal service, nor there is any such fact on the file to show that there was sufficient reason for the appellate court to summon these respondents by way of substituted service. Kiranjit Kaur and Jaspal Kaur are household ladies, they never read the newspaper. Gurbachan Singh also a rustic village and never read out the newspaper. Moreover, Chardi Kala has no circulation in Village Ablu Khurana, Rameana and Village Sukhna Ablu.

8. That due to the illegal order of the ex-parte proceedings against the applicants/respondents, they condemned unheard and suffer huge and irreparable loss. The impugned judgment & decree is against the principles of natural justice.”

6. Counsel for the appellant has assailed the order passed by the Court below. He submits that after the process server reported that Jaspal Kaur and Kiranjit Kaur LRs of Satnam Singh-deceased were residing outside, the Court ought to have ordered the respondent to furnish correct address of unserved respondents. Instead of doing so, the Court ordered their service by way of publication invoking Order V



Rule 20 CPC without recording any satisfaction regarding evasion of service by the appellants. He submits that the publication by way of newspaper, that too of rustic rural ladies, is a weak type of service and the same cannot be treated as a valid service. He submits that the delay has been wrongly attributed to the appellants. After getting judgment and decree 10.11.2001, the respondent himself filed execution only in May 2012. There was no reason that the appellants could have gained knowledge of the ex-parte judgment and decree. He thus submits that the impugned judgment and decree which was passed at the back of appellants needs to be set aside.

7. *Per contra*, counsel for the respondent has emphatically argued that the core respondent Gurcharan Singh having refused the summons and being aware of the pendency of the appeal, it is highly improbable that the appellants could not have known of the pendency of the appeal. He submits that even if 11 years delay in filing the execution is attributed to the respondent-decree holder, still there is a delay of more than one year in moving the present application. Thus, no fault can be found with the order passed by the Lower Court dismissing the application filed by the appellants seeking setting aside of judgment and decree.

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

9. From the service report, it is evident that the appellants before this Court were reported to be residing outside. In these circumstances, the proper course as per law available to the Appellate Court was to seek correct address of the unserved respondents instead of



resorting to Order V Rule 20 without recording any satisfaction that respondents were evading the service or there was no possibility of serving them in the ordinary course. In the absence of such satisfaction, the Court ought not have invoked substituted mode of service, that too, by way of publication, which is a weak mode of service.

10. In view thereof, this Court finds that the Lower Court erred in dismissing the application filed by the appellants under Order XLI Rule 21 for setting aside the ex-parte decree.

11. In view thereof, the present appeal is allowed. The ex-parte judgment and decree dated 10.11.2001 is hereby ordered to be set aside subject to payment of Rs.25,000/- costs to be paid by the appellants to the respondents. The appeal bearing Civil Appeal No.77 of 04.04.2000 is restored to its original number. Parties shall appear before the District Judge, Sri Muktsar Sahib on **01.12.2025**. The District Judge may assign the appeal to the successor Court or any other Court. The Court which shall hear the appeal, shall make an endeavour to decide the appeal preferably within six months thereafter.

12. Ordered accordingly.

13. Since the main case has been decided, pending miscellaneous application, if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

12.11.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No