



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

CR-7191-2024 (O&M)
Reserved on: 24.03.2025
Pronounced on : 07.05.2025

Yashvir Saini

...Petitioner

V/s

Shamsher Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Harsh Kinra, Advocate,
Mr. N.C. Kinra, Advocate and
Ms. Apporva Kinra, Advocate, for the petitioner.

VIKRAM AGGARWAL, J

The present revision petition is directed against the order dated 06.08.2024 (Annexure P-2) passed by the Court of learned Addl. District Judge, Jhajjar dismissing the appeal filed by the petitioner against judgment dated 28.05.2019 (Annexure P-1) passed by the Court of learned Civil Judge (Sr. Divn.), Jhajjar, vide which the application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (for short the "CPC") was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The facts, in brief, are that Shamsher Singh (respondent No.1) instituted a suit (Civil Suit No.269 of 2013) against the present petitioner (Yashvir Saini) and one Rambati for possession by way of specific performance of agreement to sell dated 18.01.2006. The case set up was that vide the said agreement to sell, defendant No.1 had agreed to sell a plot measuring 700 sq. yd. to the plaintiff for a total sale consideration of Rs.850/- per sq. yd. Earnest money of Rs.1 lakh was paid and the sale deed was to be



executed on or before 17.02.2006. Defendant No.1 did not put in appearance despite service as a result of which the suit was decreed *ex parte* vide judgment and decree dated 20.03.2014 (Annexure P-6). It would be relevant to note here that another suit (Civil Suit No.51 of 2014) instituted by Rambati against the present petitioner, again for possession by way of specific performance of agreement to sell, was consolidated with Civil Suit No.269 of 2013 and both the suites were decided together vide judgment and decree dated 20.03.2014. Whereas, the suit filed by Shamsheer Singh was decreed, that filed by Rambati was dismissed.

3.1 An execution petition was instituted by the plaintiff (Shamsheer Singh). When warrants of possession were issued, an application under Order 9 Rule 13 CPC (Annexure P-7) was preferred by defendant No.1 (present petitioner) for setting aside the *ex parte* judgment and decree dated 20.03.2014. The stand taken in the said application was that proper service in accordance with the provisions of CPC had not been effected upon defendant No.1 and that after a fake report of '*Ruh Posh*' (evading service), *Munadi* was ordered, which was also not carried out in accordance with law. It was averred that even if the report of defendant No.1 evading service had come, the Court should have made more efforts to effect service by way of the normal process and should not have resorted to *Munadi* in the first instance. It was averred that even *Munadi* had not been carried out in accordance with law and that a rickshaw puller was engaged to carry out the *Munadi*.

4. The application was opposed by the plaintiff. From the pleadings of the parties, the following issues were framed:-

- "1. Whether the petitioner is entitled for setting aside the *ex parte* orders dated 24.12.2007, and 29.05.2007, and *ex parte* judgment and decree dated 20.03.2014?OPP**
- 2. Whether the petition is not maintainable in the present form?OPR**
- 3. Relief."**



5. Parties led their respective evidence. Vide judgment dated 28.05.2019, the application under Order 9 Rule 13 CPC was dismissed. A first appeal was preferred which was also dismissed vide judgment and decree dated 06.08.2024 passed by the Court of learned Addl. District Judge, Jhajjar, leading to the filing of the present execution petition by defendant No.1 (present petitioner).

6. Learned counsel for the petitioner was duly heard.

7. It was strenuously urged by Mr. Harsh Kinra, learned counsel representing the petitioner that grave injustice had been caused to the petitioner on account of the faulty process adopted by the trial Court at the time of trial of the suit. Learned counsel referred to the interlocutory orders passed during the course of trial, which have been reproduced in the petition. It was submitted that neither the report of '*Ruh Posh*' was acceptable nor was the *Munadi* carried out in accordance with law. Learned counsel also submitted that before resorting to *Munadi*, the Court should have made certain more efforts to get service effected through normal course.

7.1 Learned counsel submitted that even the address given in the civil suit was wrong, for, the petitioner is a resident of House No.250, Sector-20, Sainipura, District Rohtak, whereas the address mentioned in the Civil Suit was House No.642, Sector-20, Sainipura, District Rohtak. Learned counsel referred to the documentary evidence produced before the Court while the application under Order 9 Rule 13 CPC was under consideration and submitted that all documents show that the address of the petitioner was House No.250, Sector-20, Sanipura, District Rohtak and not House No.642, Sector-20, Sainipura, District Rohtak.



7.2. Learned counsel further submitted that even service upon an adult female member of a family cannot be taken to be valid service because in terms of the amendment carried out in Order 15 Rule 5 CPC, service has to be effected upon an adult male member of the family. It was submitted that under the circumstances, even the alleged service before the executing Court through the mother of the petitioner would not be taken to be valid service and it is only when the petitioner came to know about the *ex parte* judgment and decree having been passed against him, that the application under Order 9 Rule 13 CPC was preferred.

7.3 Learned counsel submitted that since proper service had not been effected upon the petitioner, he could not defend the matter and the suit was, therefore, erroneously decreed *ex parte* against him. It was submitted that the *ex parte* judgment and decree deserves to be set aside and an opportunity deserves to be given to the petitioner to contest the suit. In support of his contentions, learned counsel placed reliance upon the judgment of a coordinate Bench of this Court in the case of ***Sanjeev Kumar V/s Vinod Kumar Mahajan and others*, 2018(2) Law Herald 1205.**

8. I have considered the submissions made by learned counsel for the parties and have also perused the record which was duly summoned.

9. It has been observed that in suits filed for possession by way of specific performance of agreement to sell, a common *modus operandi* is adopted by defendants. Initially, they get proceeded against *ex parte*. Then they would either move an application for setting aside the order vide which they have been proceeded against *ex parte* and join the proceedings or they would wait for an *ex parte* judgment and decree to be passed, execution petition to be filed, warrants of possession to be issued, after which they would institute a petition under Order 9 Rule 13 CPC. The endeavour in such



cases, is to delay the decision of the suit for obvious reasons. No doubt, there may be genuine cases as well, where service is actually not effected and under the circumstances, such defendant/s would be well within his right to agitate before the Court concerned. However, cases of abuse of the process of law, as have been referred to above, are also not unknown. In fact, such practice is rampant.

10. Be that as it may, this Court proceeds to examine the truthfulness of the case set up by the petitioner. Civil Suit No.269 of 2013 was instituted by Shamsher Singh against the present petitioner (Yashvir Saini) in which subsequently Rambati was also impleaded. The address of Yashvir Saini in the said suit had been given as “642/20, Sainipura, Rohtak”. Another suit was instituted by Rambati (Civil Suit No.51 of 2014) against Yashvir Saini in which Shamsher Singh was defendant No.2. In that, the address given was only “Sainipura Tehsil and District Rohtak”. However, it has come on record that in the said case, service of defendant No.1 was effected at the address of “250/20 Sainipura, Rohtak” and despite service he did not put in appearance. The suits were eventually consolidated. The summons in civil suit titled as “Rambati Vs. Yashvir Saini” are on record as Ex.R3, wherein the address of Yashvir Saini had been given as “250/20” and the summons says that the same had been served upon Yashvir Saini. It, therefore, means that Yashvir Saini had due knowledge of the suit filed by Rambati but chose not to appear despite service. It can safely be concluded that he, therefore, had knowledge about the suit instituted by Shamsher Singh also.

11. Going further, the report of “*Ruh Posh*” was perused by the Court concerned on 11.09.2007 and the Court expressed its satisfaction that the defendant could not be served through the ordinary process and he was accordingly summoned through *Munadi* for 12.11.2007. Accordingly, *Munadi*



was carried out. Report to this effect was furnished to the Court and since Yashvir Saini did not put in appearance, he was proceeded against *ex parte* on 24.12.2007. I do not see any illegality in the procedure. There is another aspect of the matter. In the sale deed dated 09.10.2003 (Ex.R5) by way of which defendant No.1 had purchased the property from Rambati, he gave his address as “642/20, Sainipura, Rohtak”. The agreement dated 18.10.2006 (Ex.R7) also gave the address of defendant No.1 as “642/20 Sainipura”. While stepping into the witness box as AW2 in the proceedings under Order 9 Rule 13 CPC, defendant No.1 admitted the correctness of the sale deed and the agreement. He could not explain as to how the address in the said document was mentioned as 642/20 and how it was 250/20 in the other document produced by him. Either he was residing at two places or one property had two numbers. In any case, defendant No.1 did not produce any evidence to clarify this fact.

12. The last nail in the coffin was the averment made in the application moved under Order 9 Rule 13 CPC (Annexure P-7), wherein, defendant No.1 gave no date as to when he had acquired the knowledge of the *ex parte* judgment and decree and from whom. It has to be borne in mind that the *ex parte* judgment and decree was passed on 20.03.2014 and the application under Order 9 Rule 13 CPC was moved in June, 2018 when the execution proceedings were at the fag end and the sale deed of the disputed property had been got executed in favour of Shamsher Singh. The endeavour and the whole purpose was to delay the proceedings, which defendant No.1 was successful in doing. The agreement to sell was executed in 2006, the *ex parte* judgment and decree was passed on 20.03.2014, the application under Order 9 Rule 13 CPC was instituted on 07.06.2018 and today we are in 2025. Almost 20 years have gone by. Such unscrupulous elements as the petitioner



have plagued the legal system and are major contributors to delay in administration of justice. Such persons misuse and abuse the process of law with impunity and find out lacunae in the procedural laws to misuse them to their advantage and to the disadvantage of the other side.

13. The judgment in the case of **Sanjeev Kumar's** case (supra) lays down that service to an adult female member of a family would not be taken to be valid service in view of the amendment by this Court in Order 15 Rule 5 CPC. There is no quarrel with the said proposition of law. However, for the reasons discussed in the proceeding paragraphs, this judgment would not come to the aid of the present petitioner because pursuant to summons accepted by the mother of the petitioner, he appeared in the execution proceedings.

14. Both Courts examined the matter from the correct perspective and rightly non-suited the petitioner. There is absolutely nothing on record, nor is there any illegality in the decisions under challenge warranting interference by this Court.

15. In view of the aforesaid, the instant revision petition is found to be devoid of merit and is accordingly dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 07.05.2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No