

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

114

CR-7270-2024 (O&M)
Date of decision: 15.07.2025

Raj Kumar

...Petitioner(s)

Vs.

Bhagat Singh (now deceased) through his legal heir ...Respondent(s)

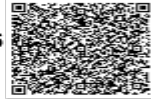
CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. V.K.Sharma, Advocate for
Mr. Surinder Mohan Sharma, Advocate
for the petitioner.

NIDHI GUPTA, J.

Present Civil Revision Petition has been filed by the defendant seeking setting aside of the judgment dated 18.11.2023 (Annexure P-1) passed by the learned Additional Civil Judge Senior Division, Rajpura; and judgment dated 02.09.2024 (Annexure P-2) passed by learned Additional District Judge, Patiala, whereby application filed by the petitioner under Order 9 Rule 13 CPC for setting aside exparte judgment and decree dated 04.10.2016 passed by the learned Civil Judge (Junior Division), Rajpura in Civil Suit No. 174 dated 29.09.2015, has been dismissed by both the Courts below.

2. Learned counsel for the petitioner/defendant submits that the learned Courts below were in a patent error in dismissing the application of



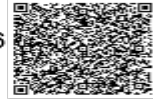
the petitioner under Order 9 Rule 13 CPC as they failed to appreciate that the petitioner had not been served in accordance with law. It is submitted that even Munadi and affixation of copy of summons had been got done at the wrong address i.e. village Dhakansu Majra instead of village Dhakansu Kalan. This is evident from the copy of summons for Munadi and affixation (Annexure P-5). It is pointed out that between the two villages i.e. Dhakansu Majra (where service was affected) and Dhakansu Kalan (where petitioner actually lives) is 1½ k.m. It is therefore proved that the petitioner was not served in accordance with law. Further, the Learned Courts below have ignored the principle of *Audi Alterm Patram* and, therefore, the impugned judgments deserve to be set aside.

3. It is also submitted that learned Courts below failed to appreciate that the judgment and decree dated 04.10.2016 was procured by the respondent/plaintiff under false pretext and on presenting false facts. It is submitted that to ensure justice between the parties, it is necessary that the impugned judgments be set aside.

4. No other argument is raised on behalf of the petitioner.

5. I have heard Id. counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the petitioner.

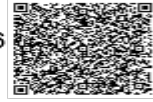
6. Briefly stated the facts are that the plaintiff/respondent, had filed a suit for recovery of Rs.2,04,400/- i.e. Rs.1,22,000/- on account of rent for use and occupation charges of the shop for the period from 01.01.2005 to 01.03.2015 @ Rs.1,000/- p.m; Rs. 64,000 as interest; Rs.14,000/- as house tax; and Rs.4,400/- as electricity bills. As the petitioner had failed to



make the said payments despite request made by the plaintiff, the plaintiff had filed a suit for recovery; which was decreed *exparte* vide judgment and decree dated 14.10.2016 passed by the learned Civil Judge (Junior Division), Rajpura. As such, petitioner filed the instant application under Order 9 Rule 13 CPC on 07.08.2018 before the Additional Civil Judge Senior Division, Rajpura.

7. It is the case of the petitioner that he came to know about the said *exparte* decree only on 18.07.2018 from his brother Om Parkash. However, the said assertion of the petitioner cannot be accepted as the petitioner has failed to examine his brother Om Parkash. Therefore, source of knowledge of the petitioner regarding passing of the *exparte* judgment and decree dated 04.10.2016 is not proved.

8. It has further been stated by the petitioner that valid service was not affected upon him as summons were issued to the incorrect address as petitioner was a resident of village Dhakansu Kalan; whereas service had been affected in village Dhakansu Majra. However, this argument of the petitioner is also liable to be rejected. Notice was issued to the petitioner on 5.3.2016 to put an appearance on 19.3.2016. As per the Service report dated 11.3.2016 Process Server Ajay Kumar RW4 had first gone to village Dhakansu Majra and upon enquiry, he had discovered that petitioner was residing at village Dhakansu Kalan. Accordingly, Process Server had then gone to village Dhakansu Kalan and met with the wife of the petitioner, who had informed the Process Server that petitioner was not at home. Report dated 11.03.2016 of the Process Server correctly identified



the residence of the petitioner. Munadi was also carried out yet, petitioner did not appear. It was only thereafter that the petitioner was proceeded against exparte vide order dated 21.04.2016 which reads as follows: -

"As per report of Ahlmad service of defendant through Munadi has been effected but defendant did not appear despite service through Munadi. Case called during the day. It is 4 PM. Hence, defendant is proceeded against exparte. Now to come up on 13.05.2016 for exparte evidence of plaintiff."

Gagan Deep Kaur/CJJD/21.04.2016 Rajpura"

9. From the above facts, it is clear that Service was validly affected upon the petitioner. However, he chose not to appear.

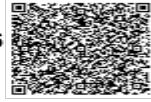
10. It is important to note that the petitioner did not challenge the Service Report of the Process Server as false and forged. Petitioner even failed to cross-examine Process Server Ajay Kumar RW4. The fact that the Process Server had verified the correct address and served notice in Village Dhakansu Kalan, was not challenged by the petitioner by cross-examining the Process Server. Moreover, even RW2 Chowkidar Amar Singh had confirmed that he served all 3 villages, namely Dhakansu Kalan, Dhakansu Majra and Dhakansu Khurd. RW-2 Amar Singh Chowkidar confirmed that he had identified the petitioner's house and assisted the Process Server to effect service of notice. In fact, Chowkidar had testified that he personally conveyed the pendency of the Civil suit to the petitioner. Even testimony of Chowkidar remained unchallenged. Thus, not only was it proved that the petitioner was served in accordance with law, but it was also proved that the petitioner had knowledge of the pendency of the suit. I am in



agreement with the observations of the learned Courts below that the petitioner cannot be permitted to take benefit of his own wrongs.

11. The relevant findings of the Id. Additional Civil Judge, Senior Division, Rajpura, in this regard in judgment dated 18.11.2023, are as under:

“12. Perusal of the file further shows that notice issued to defendant on 05.03.2016 for 19.03.2016 was received back with the report that on inquiry it was found that Raj Kumar son of Shri Ram is resident of Village Dhakansu Kalan. Thereafter, Ajay Kumar, Process Service went to Village Dhakansu Kalan and inquired about defendant Raj Kumar. There wife of Raj Kumar defendant was present and when she was asked about him she told that as of now Raj Kumar is not present in the house. It is further mentioned by Ajay Kumar, Process Server in his report that it appears that defendant Raj Kumar is intentionally evading service. Such report of Ajay Kumar, Process Server is dated 11.03.2016. Perusal of Munadi process issued by this court for 21.04.2016 shows that it was duly served upon defendant in accordance with law. From these facts it comes out that wife of defendant Raj Kumar was informed by Ajay Kumar, Process Server. On previous occasion also when notice to defendant was issued on 20.02.2016 his wife was present at the given address and then also she informed that her husband is not present in the house. Repeated evasion of service by defendant Raj Kumar on above said occasions substantiate the report of Ajay Kumar, Process Server that defendant is evading service intentionally. It is not the case of defendant/ applicant that report made by Ajay Kumar, Process Server is wrong or manipulated. Perusal of the record shows that respondent/plaintiff got examined Ajay Kumar, Process Server as RW4. No question was asked during

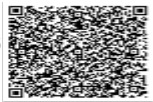


cross-examination to RW-4 Ajay Kumar, Process Server that his report is false, influenced or manipulated. Hence the report made by Ajay Kumar, Process Server as discussed above remains undisputed and unchallenged on the file.”

12. It is for this reason that the learned Courts below gave the concurrent findings that in actual fact it was the petitioner who wilfully and deliberately manipulated the service of summons as he intentionally did not wish to appear before the Court.

13. Further, in pursuance to the decree dated 04.10.2016, the respondent/plaintiff/decreed holder had filed an Execution Application in which also the petitioner had been proceeded against exparte. The application filed by the petitioner against exparte order was allowed by the Executing Court vide order dated 01.11.2018 subject to payment of costs of Rs.500/- which was not paid by the petitioner. Even the objection petition filed by the petitioner in the execution application was dismissed by the Executing Court on 07.01.2019. Thereafter, property of the petitioner was attached and put on auction and Munadi was also affected in the locality and notice of auction was also affixed at the spot. Therefore, it appears that the present application under Order 9 Rule 13 CPC was filed only with a view to further delay the matter.

14. From the above facts, it is clear that petitioner had failed to show sufficient cause for non-appearance. Therefore, I find no ground is made out to interfere in the impugned judgments. The present Civil Revision Petition is hereby **dismissed**.



15. Pending application, if any, stands disposed of.

15.07.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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