

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****238****CR-723-2018 (O&M)****Date of decision: 06.05.2026****Food Corporation of India****...Petitioner(s)****Vs.****M/s. Goldy and Goldy****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. K.K.Gupta, Advocate
for the petitioner.

Mr. Jai Vir Yadav, Senior Advocate with
Mr. Aman Gautam, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by the decree holder laying challenge to the order dated 03.11.2017 (Annexure P-1) passed by learned Civil Judge (Senior Division), Karnal, whereby application filed by the petitioner under Order 9 Rule 4 read with Section 151 CPC for setting aside dismissal order dated 27.10.2014, has been dismissed.

2. Brief facts of the case in chronological order are as follows: -

06.09.1983: Petitioner/decreed holder had filed a Civil Suit No. 1122 of 1983 for recovery. Vide judgment and decree dated 06.09.1983, suit of the petitioner was decreed; and decree for recovery of Rs.3,57,761.50 was passed in favour of the petitioner alongwith interest @ 18% p.a.



20.07.1994: The petitioner had filed Execution Application dated 20.07.1997 (Annexure P-2) seeking execution of the above said Award/Decree dated 06.09.1983.

February 2010: In February 2010, the Senior Sub Judge, Kurukshetra transferred the said Execution Petition, which was initially filed in Kurukshetra to District Karnal due to change of jurisdiction.

17.09.2010: Vide the order dated 17.09.2010, the Executing Court had attached property of the judgment debtor and laid out schedule for auction. Vide order dated 13.05.2025 passed by a Coordinate Bench of this Court in CM-9652-CII-2025, order dated 17.09.2010 has been taken on record as Annexure P-1.

30.09.2010: Vide order dated 30.09.2010 (Annexure P-3), the Execution Petition was dismissed under Order 9 Rule 2 CPC for non-compliance of Court orders.

18.10.2010: On 18.10.2010, the petitioner/decreed holder had filed an application for restoration (Annexure P-4) under Order 9 Rule 4 read with section 151 CPC for setting aside order dated 30.09.2010.

23.03.2011: The respondent/judgment debtor had filed reply dated 23.03.2011 (Annexure P-5) to the above said application filed by the petitioner.

27.10.2014: Vide order dated 27.10.2014, the said application for restoration filed by the petitioner under Order 9 Rule 4 read with Section 151 CPC has also been dismissed for want of prosecution.



28.10.2014: On 28.10.2014, the petitioner/decreed holder had filed second application for restoration under Order 9 Rule 4 read with section 151 CPC for setting aside order dated 27.10.2014.

03.11.2017: Vide impugned order dated 03.11.2017 (Annexure P-1), the second application of the petitioner under Order 9 Rule 4 read with Section 151 CPC, has been dismissed.

3. Hence, present Revision Petition.

4. It is *inter alia* submitted by learned counsel for the petitioner that pursuant to the order dated 17.09.2010, petitioner had to deposit munadi fee and process fee. The petitioner had duly filed an application before the Executing Court seeking permission to deposit munadi fee. The said application was allowed on 29.09.2010; thereby permitting the petitioner to deposit munadi fee of Rs.270/- at his own responsibility. Receipt dated 01.10.2010 was duly issued to the petitioner. Yet, without appreciating these facts, Execution Petition was dismissed under Order 9 Rule 2 CPC for non-compliance of Court order dated 17.09.2010.

5. Learned counsel submits that the learned Executing Court has erred in passing the impugned order and ought to have appreciated the facts and circumstances of the case; as also the material available on record. In passing the impugned order, the learned Executing Court has not considered the specific pleading made by the petitioner in the application for restoration to the effect that: "*That there is mention of one application in the order to show that decree-holder was aware of the date 30.09.2010 which is of course emphatically denied as the*



application in fact filed by Decree-Holder through the clerk of the counsel for the decree-holder namely Sumit Sharma son of Shri Dhani Ram who is Senior clerk with the Decree Holder no date at all has been mentioned in the said application after orders from this Hon'ble court was never handed over to the counsel for the Decree-Holder Shri R.R. Gupta or his son Rohit Gupta. The original application is on the file and photocopy of the same is enclosed herewith. In fact Mr. R.R.Gupta, Sr. Counsel for the decree holder had gone to Ahmedabad to a Joint Specialist Surgeon for getting himself operated upon on the right leg and in fact Mr. Gupta was operated upon on 20.04.2010 and remained in the hospital at Ahmedabad and returned on 05.05.2010 and even after returning to Karnal, Mr. R.R. Gupta, Advocate remained confined to bed at Karnal in his house and did not attend the court at all and in fact for the 1st time came to Distt. Courts, Kamal on 13.10.2010 in his chamber when Mr. R.R. Gupta told his Senior clerk "son" Sumit Sharma to get the matter expediting through Ahamlad of the Court. It is worth-mentioning here that during this gap, even Shri Dhani Ram, Senior clerk, was also under medication due to neck-wound and High sugar patient and already he is under insulin injections twice in a day being administered to him and this has resulted into the unavoidable circumstances in not further processing the subject matter of the dispute. After coming to Sumit Sharma son of Shri Dhani Ram, application was traced out and immediately further processing of the case was done Mr. R.R. Gupta, Advocate, who also started regularly coming to the Distt. Courts, Kamal."



In view of the fact, the Learned court below ought to have allowed the application filed by the petitioner (herein).”.

6. It is submitted that in any event, delay is not a ground for dismissal of the Execution Petition. The procedural laws are tools of justice and need to be interpreted accordingly. In support, learned counsel for the petitioner relies upon a judgment passed by Hon’ble Supreme Court in **Joginder Singh v. Dr. Virinderjit Singh Gill (SC) : Law Finder Doc Id # 2658147**; and a judgment passed by this Court in **Punjab Wakf Board vs. Mehar Singh (P&H) 2005 (3) PLR 38**.

7. It is accordingly prayed that the present Revision Petition be allowed; and application for restoration filed by the petitioner be allowed; and the impugned order dated 03.11.2017 be set aside.

8. *Per contra*, learned Senior Counsel appearing on behalf of the respondent/judgment debtor vehemently opposes submissions advanced on behalf of the petitioner and submits that order dated 30.09.2010 (Annexure P-3) has been passed under Order 9 Rule 2 CPC; whereas restoration application (Annexure P-4) has been filed by the petitioner under Order 9 Rule 4 CPC.

9. Learned Senior Counsel argues that in view of the fact that order dated 30.09.2010 had been passed under Order 9 Rule 2 CPC, a composite restoration application ought to have been filed by the petitioner under Order 9 Rule 4 and Rule 9 CPC. This is so that Execution Petition had been dismissed not just for want of process fee and munadi fee but had also been dismissed on account of non-appearance of



learned counsel for the decree holder. Thus, order dated 30.09.2010 had been passed on a two-fold basis. Consequentially, composite application had to be filed by the petitioner. Thus, the application of the petitioner suffers from material legal defect and could not have been entertained.

10. It is further submitted by Id. Senior Counsel for the respondent that after passing of order dated 30.09.2010 (Annexure P-3), application for restoration dated 18.10.2010 under Order 9 Rule 4 CPC (Annexure P-4) had been preferred. However, the same came to be dismissed vide order dated 27.10.2014 for want of prosecution. It is submitted that the petitioner has nowhere stated as to when the said application was restored; or whether the order dated 27.10.2014 had ever been challenged; or had ever been set aside; and if the said order was set aside then by order of which date, the order dated 27.10.2014 was set aside.

11. Learned Senior Counsel contends that in the absence of any apparent challenge to the order dated 27.10.2014, mere challenge to the order dated 30.10.2010 will not suffice. He accordingly prays that the present Revision Petition deserves to be dismissed.

12. No other argument is raised on behalf of the parties. I have heard learned counsel for the parties and perused the case file in great detail. I find merit in the submissions advance on behalf of respondent/judgment debtor.

13. Sequence of events has already been recorded hereinabove.

The above facts speak for themselves and expressly outline the sheer



carelessness on part of the petitioner-Corporation in pursuing the Execution Petition, thereby causing immense loss to the public exchequer.

On 17.09.2010, following order was passed: -

“List of property filed, out of which property mentioned at Serial no.1 to 3 in the attached list pertaining to the share of JD Vinod Kumar Lather is already under attachment. Same be put to auction for the following dates:

<i>Court House</i>	<i>Spot</i>	<i>Sale</i>	<i>Report</i>
<i>30.09.10</i>	<i>11.10.10</i>	<i>25.10 10</i>	<i>08.11.10</i>

Whereas, property mentioned at Serial no. 04 to 6 pertaining to the share of JD Vinod Kumar Lather is not attached so far. Let, warrants of attachment qua this property be issued for 30.09.10. A separate letter to the concerned Tehsildar be also written for effective compliance and non-compliance thereof would be viewed seriously.”

14. Perusal of the above order shows that petitioner was required to deposit process fee and munadi fee by 30.09.2010. The record reveals that one day prior thereto i.e. on 29.09.2010, petitioner had moved an application to deposit munadi fee, which was allowed on 29.09.2010 itself. Thus, there is no reason as to why Munadi fee was not deposited on 29.9.2010 itself. As per the receipt No. 2080 dated 01.10.2010, munadi fee was deposited by the petitioner *after* stipulated period. No cogent reason has been given, or sufficient cause shown for delay in deposit of process fee.



15. A perusal of the order dated 11.05.2018 passed by a Predecessor Bench in the present Revision Petition would show that while issuing notice of motion, petitioner had contended as follows:-

“Learned counsel for the petitioner contends that the order dated 17.9.2010 was silent with regard to deposit of process fee and munadi fee. Petitioner/ decree-holder filed an application on 29.9.2010 for deposit of munadi fee. Munadi fee was assessed but the same could not be deposited on 30.9.2010 being closing day. Munadi fee was deposited on 1.10.2010 and the same could have been given effect before the sale on 25.10.2010 and report to be submitted on 8.11.2010.

Notice of motion for 10.8.2018.” (Emphasis added)

16. Thus, the case of the petitioner is that munadi fee could not be deposited on 30.09.2010 as the same was closing day. However, the calendar shows that the same was not a holiday or a closing day. Thus, petitioner has been unable to give any acceptable reason as to why process fee and Munadi fees was not deposited within time; thereby reflecting the rank carelessness and irresponsibility of the officials of the petitioner Corporation in pursuing the present execution petition and in dealing with public money. Consequentially, the Execution Petition came to be dismissed by the Executing Court vide order dated 30.09.2010 for the following reasons: -

“Warrants of attachment which were to be issued for today could not be issued for want of PF and munadi fee. Perusal reveal that this is an oldest execution pending in this court pertaining to the year 1994. The warrants of attachment



have not been issued for non-compliance of court orders on behalf of D.H. The counsel for D.H has even failed to turn up. This court was anxious as to whether counsel for D.H. is in the knowledge of the fact that the case is fixed for today as the case is also fixed for 08.11.10 for warrants of auction, then Id. counsel for JD has informed the court that counsel for the DH was well aware about the fact as he has also obtained a certified copy of the previous order dated 17.9.10. Through, the case is also fixed for 08.11.10 for awaiting report of warrants of auction, but warrants of auction have also not been issued for want of PF and munadi fee, which was to be filed on behalf of D.H. The date for courthouse qua warrants of auction was also fixed for today..”

17. A perusal of the above order shows that Execution Petition was dismissed for 2-fold reasons: (a) want of process fee and munadi fee; and (b) as the counsel for decree holder had failed to turn up. There is merit to the argument of learned Senior counsel for the respondent that therefore, challenge to the order dated 30.09.2010 could not be laid only on the ground of non-compliance of the Court order i.e. non-filing of Court fee but challenge was also required to be laid on account of non-appearance of learned counsel. Consequentially, petitioner was required to file an application not just under Order 9 Rule 4 CPC; but also, under Rule 9 CPC. Application of the petitioner, therefore, suffers from material legal defect as, the petitioner has sought incomplete relief.

18. Further despite Court queries, learned counsel for the petitioner is unable to clarify in respect of the order dated 27.10.2014



passed on the application dated 18.10.2010 (Annexure P-4) filed by the petitioner under Order 9 Rule 4 CPC; thereby dismissing the restoration application. Nothing whatsoever has been brought to the notice of this Court by the petitioner to show that said order dated 27.10.2014 was challenged by the petitioner at any stage.

19. In the aforesaid circumstances, reliance is placed upon the judgment of this Court in **Ran Singh v. Girdhari, (P&H) : Law Finder Doc Id # 122353**; wherein it is held as under:-

“Civil Procedure Code, 1908, Order 9, Rule 2, Order 9 Rule 4 - Orders passed for filing summons and process fee on 14-12-1982 within 7 days - Suit dismissed on 31-1-1983 for failure to comply with the order - No explanation whatsoever for not filing the summons and process fee - An order passed under Order 9 Rule 2 Civil Procedure Code can only be set aside if the applicant is able to satisfy the Court that there was sufficient cause for failure - Petition dismissed.

The relevant para 5 of the said judgment is as under: -

“5. Counsel for the petitioners has not been able to dispute that no process fee or summons were filed by the petitioner in compliance with the above mentioned order. On the other hand, the application filed by the petitioner dated 31-1-1983, which was already been reproduced in full above shows that the petitioner made a wrong claim before the trial Court that he had been submitting summons for service "on each and every date of hearing." It is thus clear that he was claiming setting aside of the order on the ground that he had submitted summons in compliance with the order dated 14.12.1982 also. This claim is totally false as per the admitted position. In this



factual background if the application is considered, it is clear that there is no explanation whatsoever for not filing the summons and process fee for 31.1.1983. An order passed under Order 9 Rule 2 Civil Procedure Code can only be set aside if the applicant is able to satisfy the Court that there was sufficient cause for failure as referred to in Rule 2 Order 9 Civil Procedure Code. As has already been observed, there was no such explanation whatsoever tendered before the trial Court. Thus in my view, no case for setting aside of the order dated 31.1.1983 has been made out.”

20. Reference may also be made to another judgment of this Court in **Sumati Sagar Jain (deceased) through his LRs v. Balbir Singh (Punjab and Haryana) : Law Finder Doc Id # 670913**; wherein it is held as under: -

“Civil Procedure Code, 1908, Order 9, Rules 2, 8, Order 19, Rule 4 - Suit of the petitioners was dismissed by the Court under Order 9 Rule 2 and 8 of the Civil Procedure Code - Order 9 Rule 2 of the Civil Procedure Code was invoked by the Court because of the failure on the part of the plaintiff to pay the process fee or postal charges due to which the summons could not be served upon the defendants and Order 9 Rule 8 was invoked because the plaintiff did not appear when the case was called for hearing - Predecessor-in-interest of the petitioners, filed the application only under Order 9 Rule 4 of the Civil Procedure Code which provides that where the suit is dismissed under Order 9 Rule 2 and 3 of the Civil Procedure Code, the plaintiff may apply for setting aside the order of dismissal but here not only the suit was dismissed under Order 9 Rule 2 of the Civil Procedure Code but also under Order 9 Rule 8 of the Civil Procedure Code for which the application should have been filed by the petitioners under



Order 9 Rule 9 of the Civil Procedure Code as well - Application filed under Order 9 Rule 4 was again dismissed by the trial Court because of non-appearance despite the fact that the case was called several times during the day at different intervals - Petitioners filed another application under Order 9 Rule 4 of the Civil Procedure Code which has also been dismissed by the trial Court as it could not find any sufficient cause for the non-appearance of the petitioners or their advocate - Petitioners have been found to be completely negligent in pursuing the suit - No error is found in the order of the Court below - Revision petition dismissed."

The relevant para of the said judgment is as under:-

"8. On 06.05.2009, the suit of the petitioners was dismissed by the Court under Order 9 Rule 2 and 8 of the CPC. Order 9 Rule 2 of the CPC was invoked by the Court because of the failure on the part of the plaintiff to pay the process fee or postal charges due to which the summons could not be served upon the defendants and Order 9 Rule 8 was invoked because the plaintiff did not appear when the case was called for hearing. Predecessor-in-interest of the petitioners, however, filed the application only under Order 9 Rule 4 of the CPC which provides that where the suit is dismissed under Order 9 Rule 2 and 3 of the CPC, the plaintiff may apply for setting aside the order of dismissal but here not only the suit was dismissed under Order 9 Rule 2 of the CPC but also under Order 9 Rule 8 of the CPC for which the application should have been filed by the petitioners under Order 9 Rule 9 of the CPC as well."

21. The judgments relied upon by learned counsel for the petitioner are distinguishable on facts and law and petitioner cannot derive any benefit from the said judgments.
22. Before parting, this Court is again constrained to observe that in the present case from the sequence of events noticed above, it is evident that the petitioner-Corporation and its concerned officers have demonstrated utter negligence in pursuing present Execution Petition, which is pending since 1994. In this circumstance, this Court is left with no other option, but to **dismiss** the present Revision Petition.
23. Pending application(s) if any also stand(s) disposed of.

06.05.2026

Divyanshi

Whether speaking/reasoned:
Whether reportable:

(NIDHI GUPTA)

JUDGE

Yes/No
Yes/No