



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

CR-2140-2026

Date of Decision: 11.03.2026

PREM KUMAR

..... Petitioner

VERSUS

M/S BALBIR SINGH AND COMPANY AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Kamil Nagpal, Advocate
for the petitioner.

YASHVIR SINGH RATHOR, J. (Oral)

1. This revision petition has been instituted under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure against the judgment dated 10.02.2026 (Annexure P-3) passed by the Court of District Judge, Ferozepur, vide which the order dated 17.01.2025 (Annexure P-2) passed by learned Civil Judge (Junior Division) has been set aside vide which the application filed by the respondent/defendant under Order 9 Rule 13 of CPC for setting aside the ex parte judgment and decree dated 20.04.2022 (Annexure P-1) in Civil Suit No.CS37/36/2022 was dismissed and consequently, the application under Order 9 Rule 13 CPC has been allowed by the Court of learned District Judge, Ferozepur.



2. I have heard learned counsel for the petitioner and have gone through the material on record.

3. Learned counsel for the petitioner contends that the well reasoned order passed by the trial Court dismissing the application under Order 9 Rule 13 CPC has been set aside by the Court of District Judge, Ferozepur without assigning any cogent reasons. Learned counsel next contended that the appeal against the dismissal of the application under Order 9 Rule 13 CPC could have been filed under Order 43 Rule 1 CPC but the appeal was filed under Section 96 CPC, which was not maintainable and the impugned judgment passed by the Appellate Court is liable to be set aside. In support of his contentions, Learned counsel has cited the judgments of the Hon'ble Supreme Court in 2005(1) SCC 787, **Bhanu Kumar Jain Vs. Archana Kumar and another** and 2023 INSC 1065, **The koushik Mutually Aided Cooperative Housing Society Vs. Ameena Begum and another**.

4. However, I do not find any force in the contention raised by learned counsel for the petitioner and petition in hand is liable to be dismissed for the reasons discussed hereinafter.

5. As per version of respondents/defendants, they were proceeded ex parte and subsequently, the suit filed by the plaintiff/petitioner for recovery of Rs.2,08,000/- was decreed vide judgment and decree dated 20.04.2022. According to the respondents/defendants, the address mentioned in the summons was incorrect and summons were never served upon them. Defendant No.2



was allegedly served through his son but infact no summons were served upon his son and he was wrongly proceeded ex parte. It has been alleged that report on the summons was wrongly made by process server in connivance with the plaintiff. They came to know about the suit on 14.07.2022 when the property owned by defendants was attached in execution proceedings. A prayer was made for setting aside the ex parte judgment and decree dated 20.04.2022.

6. Petitioner/plaintiff filed reply submitting that defendant No.2 was duly served through his son and since, he did not appear before the Court, he was rightly proceeded ex parte. It is further submitted that the correct address of the defendants had been given on the summons and dismissal of the application was prayed for.

7. From the pleadings of the parties, following issues were framed:-

1. *Where there is a reasonable cause for setting aside ex parte decree dated 20.04.2022 against the applicants? OPA*
2. *Whether the present application is not maintainable? OPR*
3. *Relief.*

8. Thereafter, both the parties led their evidence.

9. Learned trial Court came to the conclusion that though son of defendant No.2 namely AW1 Udaybeer Singh Sandhu has denied his signatures on the summons Ex.DX at point 'A', yet defendants have not examined any handwriting expert to corroborate his assertion that the



signatures on summons Ex.DX are forged and fabricated and defendants have failed to prove the allegations of fraud. It was further held that non-examination of process server by plaintiff/petitioner is not sufficient to set aside the judgment and decree dated 20.04.2022 and the application under Order 9 Rule 13 was dismissed.

10. Learned Appellate Court while relying upon 2018 (1) Law Herald 526, **Prabhwati Devi and another Vs. Gurdish Singh**, has held that once it is stated on oath by defendant that summons was not served upon him and that the summons does not bear his signatures, it is incumbent upon the plaintiff to produce the process server to prove due service of summons upon the defendants in the absence of which, service having been effected on the defendant cannot be deemed to have taken place. However, no attempt has been made by respondent/plaintiff to examine the process server, who was the best person available to prove due service of summons upon the son of defendant and to disprove the plea taken by defendants regarding non-service of summons. It was further held that once AW1 had denied his signatures on the summons Ex.DX, the onus shifted upon the respondent/plaintiff and it was necessary for him to examine the process server and to give an opportunity to the defendants to cross-examine him. Besides this, it has also been observed that the report on the summons has not been verified by any Numberdar or Chowkidar of the village.

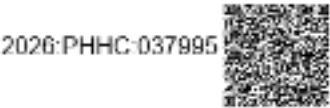
11. As a result of aforesaid discussion, the learned Appellate Court has thus rightly come to the conclusion that once AW1, who was



son of defendant, had denied his signatures on the summons Ex.DX, it was incumbent upon the plaintiff to have examined the process server to controvert his testimony and to prove that the summons was duly served upon him. The findings of the trial Court that defendant has not examined the handwriting expert to prove his case and to prove the allegations of fraud was thus erroneous and has rightly been set aside. As such, learned Appellate Court has appreciated the facts of the case, evidence on file and the law in the correct perspective while setting aside the ex parte judgment and decree dated 20.04.2022 and no illegality or manifest error has thus been committed while passing the impugned judgment by the Appellate Court.

11. No doubt the defendants have filed the appeal by mentioning the provision contained in Section 96 CPC but mere mentioning of wrong provision cannot give rise to an inference that the appeal has been instituted under Section 96 CPC as the appeal has not been instituted against a decree. The order passed on an application under order 9 Rule 13 CPC is appealable in terms of Section 43 Rule 1 CPC and even the Appellate Court has also considered the same as an appeal under Order 43 Rule 1 CPC and no decree has been drawn while allowing the appeal and matter has been remanded to the trial Court for a fresh decision. The case laws cited by learned counsel for the petitioner are thus not applicable to the facts of the case in hand.

12. As a result of aforesaid discussion, I find no merit in the present revision petition and the judgment dated 10.02.2026 (Annexure



P-3) does not call for any interference and the petition in hand is ordered to be dismissed.

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

(YASHVIR SINGH RATHOR)
JUDGE

11.03.2026
Priyanka Thakur

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No