

2026:PHHC:050774



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

CR-2868-2026 (O&M)

Date of Decision: 02.04.2026

SUDHIR SALWAN

....Petitioner

Versus

SATNAM SINGH (SINCE DECEASED) THROUGH HIS LRS

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioner.

PARMOD GOYAL, J. (ORAL)

Petitioner is aggrieved by order dated 30.09.2024 (Annexure P-5), passed by learned Additional Civil Judge (Senior Division), Batala, Gurdaspur vide which his application under Order IX Rule 13 read with Section 151 CPC was dismissed. Aggrieved by dismissal of his application vide order dated 30.09.2024, petitioner had preferred first appeal which was also dismissed by learned District Judge, Gurdaspur (First Appellate Court) vide impugned order dated 16.03.2026 (Annexure P-7).

2. Learned counsel for petitioner has contended that both the Courts have erred in passing impugned orders dated 30.09.2024 and 16.03.2026 vide which application under Order IX Rule 13 CPC as well as first appeal preferred by petitioner were dismissed. It is the case of petitioner that he came to know about passing of eviction order dated 30.05.2017 (Annexure P-1) only on 16.08.2017 when husband of respondent had approached petitioner for handing over possession and immediately thereafter on 04.09.2017 application for setting aside *ex parte* judgment and

decree dated 30.05.2017 was duly filed by the petitioner. It is submitted that once the landlord has admitted the fact that petitioner came to know about passing of eviction order dated 30.05.2017 on 16.08.2017 and that application was filed by petitioner within 30 days of date of knowledge, the Courts below ought to have set aside the *ex parte* proceedings and should have allowed present petitioner to pursue the case on merits. It is asserted that for the fault of counsel for petitioner, petitioner cannot be penalized. Reliance has been placed on the following judgments in support of the case of petitioner :-

- (i) **Sohan Lal Vs. Smt. Parkash Kaur & Ors.**, 2009 (1) RCR (Rent) 171;
- (ii) **Dwarika Prasad (D) Through LRs Vs. Prithvi Raj Singh**, 2025 (1) RCR (Civil) 359;
- (iii) **Shiv Kumar Yadav Vs. Jagannath & Ors.**, 2012 (74) RCR (Civil) 552.

3. Learned counsel for petitioner has also referred to evidence recorded in proceedings arising from application under Order IX Rule 13 whereby landlord had not cross-examined the petitioner regarding his non-appearance in the Court on the date fixed and it is argued that by virtue of failure of landlord to cross-examine petitioner on the issue of his failure to appear, the plea made by petitioner stands admitted and learned Courts below ought to have accepted the same and allowed the application preferred by petitioner under Order IX Rule 13 CPC.

4. On first look, arguments raised by learned counsel for petitioner appears to be attractive, however, in the present case, as made out from impugned orders as well as documents annexed by the petitioner with revision petition showing proceedings before the Courts below it is clearly

made out that petitioner was duly served in the eviction petition. He had duly appeared through his counsel on 09.03.2015. Power of Attorney on behalf of petitioner's counsel was duly placed on record. Thereafter, on 20.07.2015 neither petitioner nor his counsel had appeared before the learned Rent Controller and accordingly, vide order dated 20.07.2015 petitioner was proceeded *ex parte* by the learned Rent Controller. It is worth noticing that till passing of *ex parte* eviction order dated 30.05.2017, no effort was made by petitioner either to appear or to inquire about the pendency of his case. The ground taken in the present proceedings on behalf of petitioner is that counsel had not informed about the next date of hearing, however, the fact that petitioner was proceeded *ex parte* on 20.07.2015 and *ex parte* eviction order was passed on 30.05.2017 goes to show that it is petitioner himself who has to be blamed as he had not made any query about the pendency of his case for next two years during which eviction petition was pending before the learned Rent Controller. It is primary duty of litigant to pursue and prosecute its case and he cannot shift the burden upon his advocate merely because advocate had not appeared. Advocate can be faulted only for 20.07.2015, but for next two years lack of any concern to know about case shows that it is own fault of petitioner for which is now blaming his counsel.

5. Admittedly, in the present case, advocate engaged by petitioner was not even examined. No steps have been taken by him to file any complaint or for taking action against the advocate. There is no explanation coming forth from the petitioner's side as to why he kept quiet since 20.02.2015 while he was well aware that eviction petition was pending against him. It is also not in doubt that petitioner was duly served in the

eviction petition and he always knew that the ground of eviction petition was non-payment of arrears of rent. No step was ever made by petitioner to pay the arrears of rent even on 09.03.2015 when he appeared for the first time till he was proceeded *ex parte* on 20.07.2015. It appears from the conduct noted above that petitioner had taken a conscious decision not to appear and prosecute the present eviction petition, as if he had appeared in eviction petition he would have to tender rent payable to the landlord. Now after passing of eviction order petitioner cannot be allowed to assert that he is ready to pay arrears of rent as he himself has failed to avail due opportunity granted to him and had remained absent from the proceedings. From the facts and circumstances noted above, it is clear that in the present case, counsel for petitioner cannot be held to be at fault, rather it is petitioner himself who had failed to prosecute his case which appears to be deliberate and, therefore, none of the judgment relied upon by learned counsel for petitioner has got any applicability. Findings arrived at by learned Courts below is based upon facts and circumstances as well as evidence led by parties and cannot be held to be erroneous or faulted with.

6. Accordingly, findings of Court of first instance as well as learned Appellate Court dismissing application under Order IX Rule 13 CPC preferred by petitioner are upheld. Present petition is accordingly dismissed.

7. Pending application(s), if any, is/are disposed of accordingly.

02.04.2026
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No