



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

CR-4310-2026 (O&M)
Reserved on :- 22.05.2026
Date of Pronouncement:-27.05.2026
Uploaded on:-27.05.2026

Kusum Devi @ Kusma

... Petitioner

Versus

Sonia and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Aayush Gupta, Advocate
Ms. Madhvi Singla, Advocate
for the petitioner.

Mr. Arnav Kumar, Advocate
for the caveators/respondents.

VIRINDER AGGARWAL, J.

1. The present revision petition has been instituted under Article 227 of the Constitution of India invoking the supervisory jurisdiction of this Court to assail the order dated 12.05.2026 passed by the learned Additional District Judge, Ludhiana, whereby the appeal preferred by the petitioner against the order dated 20.02.2023 passed by the learned Civil Judge (Junior Division), Ludhiana, dismissing the application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for short, "CPC"), came to be dismissed.



2. The factual matrix, in brief, giving rise to the present petition is that the respondent/decreed-holder instituted a suit for possession in respect of two houses, fully described in the headnote of the plaint, along with consequential relief of permanent injunction restraining the defendants from alienating the property in dispute. As per the averments contained in the plaint, the mother of the respondent/plaintiff, namely Ram Jassi, was initially married to Shiv Kumar, and the petitioner along with the proforma respondents are stated to be the children born out of the said wedlock. It was further pleaded that approximately thirty years prior to the institution of the suit, Ram Jassi left her husband Shiv Kumar and shifted to Ludhiana, where she subsequently entered into marriage with Ram Sakal Yadav. Out of the said alliance, the respondent/plaintiff and her brother Vijay Kumar were born.

2.1. It was further averred that Plot No.2467 had been allotted to Ram Sakal Yadav and Plot No.3837 to Ram Jassi, and that the requisite installments in respect thereof had been duly paid by them, pursuant to which registered conveyance deeds were executed in their favour. During the lifetime of Ram Sakal Yadav, Plot No.2467 was allegedly exchanged with one Ram Phal and, in lieu thereof, Plot No.3838 adjoining Plot No.3837 was allotted to him. It was pleaded that construction over both the plots was raised jointly by Ram Sakal Yadav and Ram Jassi. Vijay Kumar subsequently expired on 07.12.2010 and thereafter the marriage of the respondent/plaintiff was solemnized by Ram Jassi on 22.03.2011. Since then, Ram Jassi continued residing in the property in question until her



demise on 18.03.2012. It was alleged that after her death, the proforma respondents illegally encroached upon the property in dispute.

3. Defendant No.1 appeared and filed a written statement contesting the claim of the plaintiff and specifically denying the assertion that the respondent/plaintiff was born from the loins of Ram Sakal Yadav. It was instead pleaded that she was a child born out of the wedlock between Ram Jassi and Shiv Kumar. The present petitioner, however, was proceeded against ex parte and, ultimately, the suit came to be decreed vide judgment and decree dated 20.05.2019.

4. Subsequent thereto, the respondent/plaintiff initiated execution proceedings for enforcement of the decree. It is the case of the petitioner/judgment-debtor that it was only upon receipt of notice in the execution proceedings that she acquired knowledge regarding the ex parte decree passed against her. Consequently, she filed an application under Order IX Rule 13 CPC seeking setting aside of the ex parte judgment and decree dated 20.05.2019. In the said application, it was specifically averred that the petitioner, along with the other defendants, had initially engaged counsel and appeared for the purpose of contesting the suit proceedings. It was further pleaded that the engaged counsel had assured the petitioner that since the matter pertained to civil litigation, her presence was not required on each and every date of hearing and that she would be informed whenever her personal appearance became necessary. It was also averred that the suit had initially been dismissed in default on 21.05.2015.

4.1. Thereafter, the respondent–plaintiff instituted an application seeking restoration of the suit. It was specifically pleaded that, despite



having initially entered appearance on behalf of the defendants, no counsel subsequently appeared on their behalf, and the counsel so engaged had ceased attending the proceedings without any intimation, as a consequence whereof the petitioner was proceeded against ex parte. It was further averred that the petitioner had no knowledge of the subsequent proceedings in the matter and became aware of the pendency thereof only upon receipt of a communication dated 03.06.2019 issued by the counsel representing the respondent-plaintiff regarding the filing of a caveat petition. Immediately thereafter, the petitioner engaged counsel and instituted an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 seeking setting aside of the ex parte judgment and decree. However, the said application came to be dismissed by the learned trial Court.

5. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the learned First Appellate Court, which too came to be dismissed. Hence, the present revision petition has been instituted.

5.1. The respondent, having lodged a caveat, entered appearance through learned counsel and contested the present revision petition.

6. I have heard learned counsel appearing on behalf of the parties at considerable length and have carefully perused the paper-book with their able assistance.

7. Learned counsel for the petitioner contended that the impugned orders passed by the learned trial Court as well as the learned First Appellate Court are legally unsustainable, being founded upon surmises and conjectures and suffering from a complete misappreciation of the factual matrix on record. It was submitted that both the Courts below



failed to appreciate that the application under Order IX Rule 13 CPC had been instituted within the prescribed period of limitation reckoned from the date of knowledge of the ex parte decree. It was further argued that the petitioner's absence from the proceedings was neither deliberate nor intentional, but occurred due to circumstances beyond her control, despite her having taken all requisite steps for effectively contesting the litigation, including engagement of counsel.

7.1. It was further contended that in the event the counsel engaged by the petitioner had ceased appearing without informing her, the petitioner cannot be made to suffer for the lapse or negligence attributable to the counsel. It was submitted that immediately upon acquiring knowledge regarding the ex parte judgment and decree, the petitioner acted with due promptitude and instituted the application for setting aside the same. In support of the aforesaid submissions, reliance has been placed upon the judgment rendered by a Coordinate Bench of this Court in ***M/s NK Electronics v. Narinder Kumar, 2013(4) Civil Court Cases 373.***

8. Per contra, learned counsel appearing on behalf of the respondents contended that the findings recorded by the learned trial Court as well as the learned First Appellate Court do not suffer from any illegality, perversity, or jurisdictional infirmity warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. It was submitted that both the Courts below have rightly concluded that the application filed by the petitioner was barred by limitation and that the petitioner had concealed material facts from the Court and had failed to approach the Court with bona fides and clean



hands. In support of the aforesaid contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Parimal versus Veena @ Bharti, 2011 (2) SCC (Civil)***.

9. A perusal of the application filed by the petitioner/applicant reveals that it was specifically pleaded therein that the petitioner, along with defendants No.1, 2 and 7, had engaged counsel who assured them that he would continue to represent them in the proceedings and would inform the petitioner whenever her personal presence became necessary. It was further pleaded that the suit had earlier been dismissed in default on 21.05.2015 and that in the restoration proceedings new counsel appeared on behalf of the defendants. According to the petitioner, the earlier counsel failed to inform her regarding the actual status of the proceedings. It was further averred that on 03.06.2019 she received a communication from the counsel for the plaintiff regarding filing of a caveat petition and only thereafter, upon engaging fresh counsel, she acquired knowledge that she had already been proceeded against ex parte vide order dated 11.08.2016 and that an ex parte judgment and decree had subsequently been passed on 20.05.2019. On the basis thereof, it was pleaded that the application had been instituted within the prescribed limitation period reckoned from the date of knowledge.

10. The learned trial Court, however, recorded a finding that the applicant had concealed material and relevant facts from the Court. It was observed that the petitioner had appeared through counsel during the restoration proceedings and had filed a reply to the restoration application on 06.02.2015. It was further noticed that prior to the petitioner being



proceeded against ex parte on 11.08.2016, Sh. D.P. Bhatia, Advocate, had appeared on her behalf on as many as nine occasions, which material circumstance had not been disclosed by the applicant. Accordingly, the learned trial Court concluded that the applicant was not entitled to any equitable relief.

10.1. The appeal preferred by the petitioner was thereafter decided by the learned Additional District Judge, Ludhiana. In the impugned appellate order, the learned First Appellate Court categorically identified the governing test applicable while adjudicating an application of the present nature, namely, whether the defendant honestly and sincerely intended to remain present when the matter was called for hearing and whether all reasonable efforts had been made to ensure such appearance. It was further observed that "sufficient cause" is one for which the defendant cannot be blamed for his or her absence. Upon applying the aforesaid principle, the learned Appellate Court concluded that the appellant had failed to establish any sufficient cause explaining why either she or her counsel had remained absent and further noticed that no documentary evidence had been brought on record to substantiate the plea advanced by her.

11. Ex-parte proceedings were initiated vide order dated 11.08.2016 and the application under Order IX Rule 13 CPC was filed on 10.06.2019, nearly three years thereafter, without any accompanying application seeking condonation of delay. The principal allegation raised by the petitioner is against the conduct of her counsel, alleging that owing to the negligence and omission attributable to the counsel, she could not



effectively pursue the proceedings. Learned counsel for the petitioner argued that a litigant ought not to suffer on account of lapses committed by counsel and placed reliance upon the judgment in *M/s NK Electronics versus Narinder Kumar* (supra).

11.1. A perusal of the appellate order shows that the learned First Appellate Court, without entering into a detailed discussion of the aforesaid precedent, merely concluded that the said authority was inapplicable to the facts of the present case and further observed that no evidence was required to be recorded as the petitioner had admittedly been represented through counsel and had knowledge regarding the pendency of the proceedings.

11.2. However, in the present case, it remains undisputed that the petitioner had engaged counsel who had initially entered appearance on her behalf and that during the restoration proceedings initiated by the respondent/plaintiff, another counsel had also entered appearance on her behalf. In civil litigation, personal attendance of the litigant on every date of hearing is ordinarily not mandatory. In *M/s NK Electronics versus Narinder Kumar* (supra), a Coordinate Bench of this Court had categorically held that a litigant ought not to be made to suffer on account of any inaction, deliberate omission, or negligence on the part of counsel, particularly where such lapse jeopardizes valuable legal rights of a party. It was further observed therein that where a litigant himself is not shown to be negligent and the advocate engaged by him was under a legal and professional obligation to prosecute the matter diligently, no adverse motive can ordinarily be attributed to such litigant.



11.3. The Coordinate Bench further observed that no discernible benefit could accrue to a defendant by intentionally delaying the filing of an application seeking setting aside of an ex parte decree and that non-attendance of the litigant coupled with non-appearance of counsel on particular dates may, in appropriate circumstances, constitute sufficient cause for setting aside an ex parte decree.

12. Undoubtedly, where a defendant has duly engaged a counsel to represent him in judicial proceedings, such counsel is under a professional and legal obligation to diligently appear and effectively prosecute or defend the matter on behalf of the party. In circumstances where the counsel fails to appear either on account of sufficient cause or owing to negligence, the litigant ordinarily ought not to be made to suffer solely for the lapse attributable to the conduct of the counsel.

13. However, such principle would operate only where an application seeking setting aside of an ex-parte judgment and decree has been instituted within the prescribed period of limitation. Mere engagement of a counsel does not absolve a litigant from the corresponding duty to prosecute or defend the proceedings with due diligence. A party to litigation remains under an obligation to remain vigilant, maintain regular communication with the engaged counsel, and keep itself apprised of the status and progress of the proceedings.

14. In the present case, there exists an inordinate delay of approximately three years in filing the application seeking setting aside of the ex-parte judgment and decree. Such prolonged and unexplained delay clearly demonstrates gross negligence and complete lack of diligence on



the part of the petitioner, who failed to monitor the progress of the proceedings or maintain contact with the engaged counsel despite not having received any information regarding the status of the suit for several years.

15. In such circumstances, the entire burden of negligence cannot be shifted upon the counsel alone. Although a duly appointed counsel is expected to effectively represent the interests of the litigant and remain present during the proceedings, such obligation cannot be construed so as to dispense with the litigant's own duty to remain vigilant and pursue the litigation with reasonable care and diligence. It is a settled proposition that where a defendant has appeared in the proceedings, the period of limitation for filing an application seeking setting aside of an ex-parte decree commences from the date of the decree itself. Under Article 123 of the Schedule appended to the Limitation Act, such application is required to be instituted within thirty days from the date of the decree. The period of limitation commencing from the date of knowledge becomes relevant only in circumstances where summons or notice had not been duly served upon the defendant. Conversely, where the applicant had entered appearance and participated in the proceedings, limitation necessarily runs from the date of decree itself. In such circumstances, an application under Section 5 of the Limitation Act seeking condonation of delay becomes imperative. Admittedly, no such application was filed in the present case. Consequently, the application filed by the petitioner was rightly held to be barred by limitation.



15.1. In view of the foregoing discussion, this Court is of the considered opinion that the order passed by the learned First Appellate Court does not suffer from any legal infirmity, perversity, or jurisdictional error warranting interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. Accordingly, finding no merit in the present petition, the same is hereby **dismissed**.

16. Consequent upon the final adjudication of the principal matter on the merits, all pending miscellaneous applications preferred herein, or ancillary thereto, shall stand disposed of by operation of law. Given the dispositive nature of the findings reached in the main proceedings, any independent determination of such applications has been rendered entirely infructuous and academic; hence, the issuance of separate orders in respect thereof is rendered wholly superfluous.

27.05.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No