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

CR-6670-2018 (O&M)

Date of Decision : 10.03.2026

MITHU RAM AND ANR

.... Petitioners

VERSUS

MANJIT SINGH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Dhaliwal, Advocate for the petitioners.

Ms. Sonia G. Singh, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed challenging the order dated 21.08.2018 passed by the learned Civil Judge (Junior Division) whereby the application filed by the petitioners (defendants No.13 and 14) for setting aside *ex parte* order dated 18.12.2012 was dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for permanent injunction. The defendants No.12 to 14 (respondent No.13 and the petitioners herein) and defendants No.16 to 19 (respondents No.15 to 18 herein) were proceeded against *ex parte* vide order dated 18.12.2012 as they did not appear despite service. An application was filed for setting aside *ex parte* proceedings dated 18.12.2012 qua Mithu Ram (defendant No.13) and Kimat Rai (defendant No.14). The said application was dismissed vide impugned order dated 21.08.2018. Hence the present revision petition.

3. Learned counsel for the petitioners has candidly admitted that petitioner No.1 (defendant No.13), namely, Mithu Ram, son of Surat Ram was duly served hence learned counsel states that he does not wish to press the present revision petition qua petitioner No.1 (defendant No.13), namely, Mithu Ram, son of Surat Ram.

4. Ordered accordingly.

5. Learned counsel for petitioner No.2 (defendant No.14) has contended that it was specifically stated in the report of the Process Server (Annexure P-2) dated 12.12.2012 that Megh Raj and Kimat Rai were not met on the spot and one Gopal Singh son of Killu Ram stated that he will inform them of the date fixed. Learned counsel has pointed out that the said Gopal Singh is not a party to the suit and is in no way related to petitioner No.2. (defendant No.14)

6. *Per contra*, learned counsel for plaintiff-respondent No.1 has candidly admitted that petitioner No.2, namely, Kimat Rai (defendant No.14) was not met at the spot at the time of service. It is the contention of the learned counsel that the copy of the summon was given to Gopal Singh son of Killu Ram who had undertaken to inform Kimat Rai of the date fixed.

7. Heard.

8. In the present case, petitioner No.2, namely, Kimat Rai (defendant No.14) was admittedly not met at the spot by the Process Server and the summons were alleged to have been handed over to one Gopal Singh. It is nowhere on the record as to how the said Gopal Singh son of Killu Ram is related to petitioner No.2-Kimat Rai. In the absence of any evidence that

Gopal Singh was in any manner related to petitioner No.2-Kimat Rai, or was residing at the same address, the service cannot be held to be valid service.

Order V Rule 15 CPC reads as under :

‘15. Where service may be on an adult member of defendant's family.— Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf service may be made on any adult member of the family, whether male or female, who is residing with him. Explanation. —A servant is not a member of the family within the meaning of this rule’.

Order V Rule 17 CPC reads as under :

‘17. Procedure when defendant refuses to accept service, or cannot be found.—Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, [who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] and there is no

agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed’.

From the facts narrated above, it can safely be inferred that neither the provisions of Order V Rule 15 CPC nor Order V Rule 17 CPC were complied with qua petitioner No.2 (defendant No.14), namely, Kimat Rai.

9. In the absence of proper service, the order dated 18.12.2012 proceedings against him *ex parte* cannot be sustained. The same is accordingly set aside. Petitioner No.2, namely, Kimat Rai would be given an opportunity to file his written statement. After filing of his written statement, plaintiff-respondent No.1 would have an opportunity of filing his replication. From the written statement filed by petitioner No.2 (defendant No.14) and the replication filed thereto, in case any further issue needs to be framed, the Court may do so in accordance with law. Parties to appear before the successor Court concerned on the date already fixed.

10. The revision petition stands disposed off accordingly. Pending applications, if any, also stand disposed off.

11. It is made clear that any observations made herein shall not be treated as an expression of opinion on the merits of the case.

10.03.2026
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No