

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****134****CR-9429-2025 (O&M)****Date of decision: 13.01.2026****Manjit Kaur****...Petitioner(s)****Vs.****Manpreet Kaur and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Parvinder Singh, Advocate
for the petitioner.

NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of Constitution of India has been filed by defendant No.2 for setting aside the impugned order dated 18.11.2024 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Dera Bassi; whereby the applications (Annexures P-15 & P-17) dated 07.03.2018 filed by the petitioner under Order IX Rule 13 of the Code of Civil Procedure, for setting aside the ex-parte order (Annexure P-5) dated 23.05.2014 and consequential ex-parte judgment and decree (Annexure P-14) dated 16.12.2016, have been dismissed; **and** further for setting aside the impugned order (Annexure P-2) dated 14.11.2025 passed by the learned Additional District Judge, S.A.S. Nagar, whereby the appeal filed by the petitioner against the aforesaid orders has also been dismissed.

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



23.04.2013: Plaintiffs/respondents No.1 and 2 herein, had filed a suit for possession dated 23.04.2013 (Annexure P-3) against the defendant No.1/respondent No.3 herein and petitioner/defendant No.2. The said suit was filed for possession by way of specific performance of unregistered Sale Deed dated 17.02.2012 in respect of the suit land as described in the plaint; with further prayer that declaration be issued to the effect that Sale Deed No. 18341 dated 28.02.2012 executed by defendant No.1 in favour of defendant No.2 in respect of the suit land be declared null and void; and for permanent injunction restraining defendant No.2 and her agents from alienating et cetera the suit property; and in the alternative, for recovery of Rs.20,00,000/-.

11.03.2014: Vide order dated 11.03.2014 (Annexure P-12) fresh summons were issued to the defendants for 22.04.2014.

22.04.2014: Eventually vide order dated 22.04.2014 (Annexure P-13), defendants were orders to be summoned through substituted service by way of publication, for 23.05.2014.

23.05.2014: Even after service through publication, defendants had failed to put in appearance. As such, defendants were proceeded against exparte vide order dated 23.05.2014 (Annexure P-5).

16.12.2016: Subsequently, vide exparte judgment and decree dated 16.12.2016 (Annexure P-14), suit of the plaintiffs was decreed for relief of specific performance; and Sale Deed dated 28.02.2012 was declared illegal, null and void; the mutation sanctioned on the basis of said Sale



Deed dated 28.02.2012 was also declared null and void; and decree of permanent injunction was also granted in favour of the plaintiffs.

21.02.2017: On 21.2.2017, plaintiffs filed execution proceedings.

07.07.2017: It is the pleaded case of the petitioner that even in the Execution proceedings, proper Service was not affected upon the petitioner. Nonetheless, the petitioner had put in appearance before the Executing Court on 7.7.2017.

06.03.2018: Thereafter, on 06.03.2018, petitioner moved application (Annexure P-15) under Order 9 Rule 13 CPC for setting aside the exparte order dated 23.05.2014; and for setting aside the exparte judgment and decree dated 16.12.2016.

07.03.2018: The petitioner had also filed an application dated 07.03.2018 under Section 5 of the Limitation Act seeking condonation of delay in filing the above said application under Order 9 Rule 13 CPC (Annexure P-17).

14.12.2018: The respondents filed reply dated 14.12.2018 (Annexure P-18) to the above said application filed by the petitioner seeking condonation of delay. The respondent also filed reply dated 06.01.2024 (Annexure P-16) to the application under Order 9 Rule 13 CPC.

18.11.2024: Vide the impugned order dated 18.11.2024 (Annexure P-1), the said application of the petitioner for condonation of delay in filing application under Order 9 Rule 13 CPC has been dismissed by the learned Additional Civil Judge (Senior Division), Dera Bassi.



14.11.2025: Against the order dated 18.11.2024 (Annexure P-1), the Appeal dated 10.12.2024 (Annexure P-19) filed by the petitioner has also been dismissed by the learned Additional District Judge, SAS Nagar vide second impugned order dated 14.11.2025 (Annexure P-2).

3. It is *inter alia* submitted by learned counsel for the petitioner that even before the Executing Court, proper Service was not affected upon the petitioner. It is only upon learning about the execution proceedings '*from reliable sources*' on 21.02.2017, that the petitioner had immediately put in appearance before the Executing Court on 07.07.2017.

4. It is submitted that however, the counsel representing the petitioner before the Executing Court had failed to inform her that applications under Order 9 Rule 13 CPC and under Section 5 of the Limitation Act for setting aside the exparte order dated 23.05.2014, as also the exparte judgment and decree dated 16.12.2016, were also required to be filed. Learned counsel contends that the petitioner being an illiterate layperson was led astray by inadequate advice given to her by her counsel. It is submitted that it is only upon engaging new counsel that the petitioner was for the first time, made aware of the need for challenging exparte judgment and decree dated 16.12.2016. It is argued that the learned Courts below have illegally and perversely completely ignored the fact that the petitioner was being diligent with the process of law and as soon as she became aware of the execution proceedings pending, she had engaged a counsel for handling the said matter in



order to file her reply/objections. It is reiterated that the petitioner being a layman and illiterate person has diligently performed her part of engaging a counsel before the execution proceedings in order to safeguard her rights. However, it was due to the lapse on the part of said counsel that the application under Order IX Rule 13 could not be filed at the first instance. The learned courts have failed to acknowledge the diligence of the Petitioner and perversely dismissed the applications (P-15 & P-17) filed by her. The learned courts have further perversely held that as the Petitioner has filed objections in execution proceedings so there is no justification in allowing the applications of the Petitioner, however, have completely ignored the fact that the vigilance of the Petitioner is apparent from the fact that the Petitioner engaged a counsel before the execution proceedings immediately upon gaining knowledge of the same; and further, the Petitioner has thereon, on being made aware of the legal requirement by her subsequent counsel, filed the applications under order IX rule 13 and Section 5 of the Limitation Act. It is accordingly submitted that there was no justification for passing the impugned orders.

5. In support, learned counsel for the petitioner relies upon judgments passed by Hon'ble Supreme Court in **Dwarika Prasad v. Prithvi Raj Singh (SC) : Law Finder Doc Id # 2676197**, decided on **20.12.2024**; and **Rafiq v. Munshilal, (SC) : Law Finder Doc Id # 104075**, decided on **16.04.1981**; wherein it is held that '*The interest of innocent party should not suffer for misdemeanour or inaction of his counsel -*



Dismissal order set aside subject to costs - Cost directed to be recovered from the defaulting counsel.'

6. Learned counsel for the petitioner has also relied upon a judgment of Madhya Pradesh High Court in **Jaagdeesh Prasad v. Rajkishre, (Madhya Pradesh)(Jabalpur) : Law Finder Doc Id # 1510103 decided on 09.05.2019**; wherein it is held as under:-

"Delay in filing an application under Order 9 Rule 13 of CPC caused due to wrong advice of counsel can be condoned as sufficient cause, provided there is no presumption of malafides or culpable negligence by the appellant. Courts must prioritize substantial justice over technicalities."

7. Learned counsel further contends that in passing the impugned orders, the Courts below have also ignored the fact that petitioner was never served in accordance with law. No valid service was affected upon the petitioner. This is clear from a perusal of the summons dated 04.04.2014 (Annexure P-20) and its corresponding Report dated 09.04.2014 (Annexure P-21). It is contended that bare perusal of the said summons establishes that no effective service was ever made upon the petitioner. It is contended that summons were only conveyed to father-in-law of the petitioner, which cannot be termed to be effective service. Even publication cannot be held to be appropriate mode of service.

8. It is lastly submitted by learned counsel for the petitioner that from the above facts, it is clear that the petitioner has been afforded no opportunity to present or lead any defence or evidence in support of her pleas raised by her. The merits of the application under



Order 9 Rule 13 CPC have not even been touched upon by learned Courts below. It is accordingly prayed that present Civil Revision be allowed; and the impugned orders be set aside.

9. No other argument is raised on behalf of learned counsel for the petitioner. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the petitioner.

10. First and foremost, the facts speak for themselves. *In-as-much* as, admittedly, suit of the plaintiffs was decreed vide exparte judgment and decree dated 16.12.2016 (Annexure P-14); thereafter execution proceedings were initiated by decree holder on 21.02.2017; whereafter petitioner had put in appearance before the Executing Court on 07.07.2017. Yet, application under Order 9 Rule 13 CPC was filed only on 06.03.2018. It has been contended on behalf of the petitioner that although the petitioner had gained knowledge of the exparte decree on 21.06.2017 yet, said application was filed only on 06.03.2018 on account of the fact that: (a) the petitioner is illiterate lady and was not aware of the requirements of law; and (b) the previous counsel had not informed the petitioner that application under Order 9 Rule 13 CPC along with the application for condonation of delay, was also required to be filed.

11. However, the said contentions of the plaintiff are not sufficient to condone inordinate delay in moving application. Firstly, it is to be noted that the petitioner, in para 9 of her application under Order 9 Rule 13 CPC (Annexure P-15), has clearly stated "*That the applicant is*



little literate lady.....". This averment of the petitioner is clearly at variance with what has been stated by learned counsel for the petitioner before this Court that she is an 'illiterate' lady. On a direct Court query, learned counsel for the petitioner has now acknowledged that the petitioner is eighth pass. Therefore, it cannot be said that the petitioner is illiterate.

12. Furthermore, a perusal of the application filed by the petitioner under Section 5 of the Limitation Act (Annexure P-17) shows that delay in filing application under Order 9 Rule 13 has been explained in para 2 thereof, as follows: -

"2. That earlier applicant engaged the counsel in execution proceeding who moved the application for setting aside the ex-parte order in execution proceedings which was allowed but previous counsel did not disclosed to the applicant for filing the application U/o 9 Rule 13 of CPC and not properly guided to the applicant. The previous counsel sought the adjournment for filling the objection and now the applicant engaged new counsel yesterday who advised to the applicant that the application U/o 9 Rule 13 of CPC is essential to get set aside the judgment and decree otherwise applicant cannot succeed to protect her right. The delay behind to file the present application is only that the previous counsel did not give the advice properly to the applicant."

13. A bare reading of the above averments shows the same to be utterly vague and general in nature. Petitioner has stated nothing as to on which date petitioner had approached her counsel; on which date petitioner had engaged new counsel; name of the counsel et cetera. No



details with regard to cause of delay are forthcoming from the said application. Thus, the ostensible reasons given by the petitioner for delay in filing application under Order 9 Rule 13 CPC do not bear scrutiny. In fact, it would appear that the matter has been deliberately delayed by the petitioner only to circumvent due process and to defeat rights of plaintiffs.

14. Contention of the petitioner that no proper service was effected upon her is also rejected on account of the fact that it is admitted by the petitioner that the summons were conveyed to her father-in-law - which is effective service. Even service through publication is a legal and effective mode of service. It has further come on record that summons sent to the petitioner by the trial court through Registered Cover were not returned to the Court; meaning thereby, the same were received by the petitioner. Even dasti service had been effected upon the petitioner which was received by her father-in-law on responsibility. Lastly, service was effected through publication. Therefore, petitioner deliberately chose not to appear before the trial court. It is only thereafter, that the petitioner was proceeded against ex parte. Therefore, the grounds sought to be given by the petitioner for not appearing before the trial Court also do not bear scrutiny.

15. It is also to be noted that the petitioner was firstly proceeded against exparte even in the execution proceedings initiated by the respondent on 21.2.2017. It is only on 07.07.2017, the petitioner had moved application for setting aside exparte order in the execution



proceedings. There is nothing forthcoming on record as to how petitioner got knowledge of the execution proceedings. All that has been stated by the petitioner in her application under Order 9 Rule 13 CPC dated 06.03.2018 (Annexure P-15) is that *“Applicant/defendant No.2 came to know about the execution proceeding on 21.06.2017 from the reliable sources.”* Clearly therefore, the petitioner is playing hide and seek with the Court. In any event, even after gaining knowledge and appearing before the Executing Court on 7.7.2017, application under Order 9 Rule 13 CPC was moved 9 months thereafter on 6.3.2018; and over one year after passing of judgment dated 16.12.2016.

16. It is cardinal principle of law that delay of each day has to be explained. In this regard, reference may be made to a recent judgment of the Hon’ble Supreme Court in **Civil Appeal No. 11794 of 2025** titled as **Shivamma (Dead) by LRs Vs. Karnataka Housing Board and others, 2025 INSC 1104 decided on 12.09.2025, Law Finder Doc Id # 2777666**, wherein it is held that each day's delay has to be explained in a mathematical manner, which has not been done by the petitioner. No cogent reason or plausible explanation has been furnished by the petitioner for condonation of such an inordinate and unexplained delay in filing the accompanying appeal. Moreover, condonation of such an inordinate delay would be tantamount to declaring the law of limitation obsolete/redundant, without any justification. Even after appearing before the Executing Court, application under Order 9 Rule 13 CPC was moved 9 months thereafter; and over 1 year after passing of judgment



dated 16.12.2016. The Hon'ble Supreme Court in **Pathapati Subba Reddy (Died) by LRs and others vs. The Special Deputy Collector (LA),**

Law Finder Doc Id # 2542600, has recently held as under:-

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) Merits of the case are not required to be considered in condoning the delay; and*
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision." (Emphasis added)*

17. It is my considered view that keeping in mind the totality of the facts and circumstances of the case, the reasons cited by the petitioner for condonation of delay, or for non-appearance, did not constitute sufficient cause. The explanation furnished by the petitioner



does not constitute 'sufficient cause' as required under law. It is to be appreciated that rights of parties get crystallised over time. It would be inequitable to the plaintiff/ decree holder if delay is condoned at this belated stage, and in the above facts. The above said facts are self speaking and amply reflect the utterly casual and cavalier attitude adopted by the petitioner in pursuing the present litigation.

18. Moreover, duty lies upon the petitioner to be vigilant towards her rights to pursue litigation diligently. The petitioner cannot totally sleep upon the matter after allegedly entrusting the same to her counsel. In this situation, it would be apposite to refer to recent judgment of the Delhi High Court in **Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd., (Delhi): Law Finder Doc Id # 887148** holding that:

"11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth



by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted.”

19. The aforesaid 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.
20. In view of the above, present Civil Revision Petition is **dismissed**.
21. Pending application(s), if any, also stand(s) disposed of.

13.01.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No