* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 28.10.2026
Date of Decision: 05.11.2026
Date of Uploading: 05.11.2026

\# **CNR No. DLHC010017232026**

\+ CM(M) 168/2026 & CM APPL. 4310/2026

ISHA INDUSTRIES .....Petitioner

Through: Mr. Anubhav, Mr. Saurabh Shekhar, Mr. Rohit Dayma and Mr. Arindam Singh, Advs.

versus

PARVEEN MAHAJAN .....Respondent

Through: Mr. Gaurav Mahajan, Adv.

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

%

1. Through the present petition, the petitioner seeks to challenge the orders dated 03.05.2025, 16.10.2025 and 24.12.2025. The learned trial court *vide* order dated 03.05.2025 proceeded *ex-parte* against the petitioner and *vide* order dated 16.10.2025 dismissed the petitioner's application under Order IX Rule 7 of the Code of Civil Procedure, 1908[1]. Further, *vide* order dated 24.12.2025, the learned trial court dismissed the petitioner's review application under Order XLVII Rule 1 CPC against the order dated 16.10.2025.

2. The brief facts of the present case are as follows

3. The respondent/plaintiff has filed the underlying commercial recovery suit on 12.09.2024 seeking Rs. 6,41,058/-. The underlying suit arrayed 3 defendants *viz.* the petitioner/proprietorship as

[1] Hereinafter "CPC"

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

defendant no. 1, Isha Sharma, the proprietor, as defendant no.2 and 3. As per the memo of parties in the underlying suit, Defendant nos. 1 and 2 had the same address being *'J-11/86, Rajouri Garden, New Delhi-110027*[2] and peculiarly, defendant no.3, despite being the same person as defendant no.2/proprietor, was arrayed with the address as '*Khasra No. 1740 ME, Part B Bahadurgarh, Haryana., 124507*[3]. Even though admittedly defendant nos. 2 and 3 are the same person arrayed at two different addresses, however, in this judgment, in order to avoid confusion, they shall be dealt with separately, as done by the learned trial court.

4. Before the institution of the underlying suit, the respondent had also filed a parallel complaint dated 20.05.2021 against the petitioner under section 138 of the Negotiable Instruments Act contending that the cheque issued in lieu of the outstanding amount of Rs. 6,41,058/- had been dishonored.

5. The learned trial court *vide* order dated 19.11.2024 noted that the summons issued to petitioner/defendant no.1 and defendant no. 2 were received back with the report that no firm and person by the name of Isha Industries and Isha Sharma respectively was found at that address, whereas, summons to defendant nos. 1-3 issued through RC were received back with the report "no such person".

6. On 06.02.2025, the learned trial court noted that the summons issued to defendant no.3 came back as "refused" and thus, the same was considered to be deemed service to defendant no. 3. Thereafter, the respondent stated that petitioner/defendant no.1 and defendant no.2 had been evading service of summons, and thus, sought to file an

[2] Hereinafter "Rajouri"
[3] Hereinafter "Khasra 1740"

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

application under Order V Rule 20 CPC seeking substituted service through publication.

7. The application under Order V Rule 20 CPC was allowed *vide* order dated 17.03.2025 and petitioner/defendant no.1 and defendant no. 2 were permitted to be served through publication in "Veer Arjun" and "The Statesman". Pursuant to the liberty granted *vide* order dated 17.03.2025, the respondent on 24.04.2025 served summons to petitioner/defendant no. 1 and defendant no.2 through "Veer Arjun" and "The Statesman".

8. The learned trial court *vide* order dated 03.05.2025 noted that the petitioner/defendant no.1 and defendant no. 2 had been served through publication, and defendant no.3 has been deemed to be served on 03.04.2025. Thus, despite completion of service, the defendants had not filed their written statements, and no explanation regarding the absence had been presented. Accordingly, the defendants had been proceeded *ex-parte.*

9. It is stated that the proprietor of the petitioner, on 24.06.2025, while checking the status of another case, acquired knowledge of the underlying suit. Accordingly, the petitioner on 11.07.2025 filed an application under Order IX Rule 7 CPC seeking to set aside the *ex-parte* order dated 03.05.2025 on the ground that the substituted service through publication in Delhi based newspapers did not amount to proper service as the petitioner/proprietorship's registered address was in Haryana and the proprietor herself was a permanent resident of Punjab.

10. The application under Order IX Rule 7 was dismissed by the learned trial court on 16.10.2025 noting that all the three defendants had been effectively and properly served through publication, or by

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

deemed service, and the defendants could not, at a belated stage seek to file a written statement. The learned trial court, however, granted the defendants liberty to cross-examine plaintiff witnesses to the limited extent of their deposition.

11. Defendant no. 2 and 3 filed a review application against the order dated 16.10.2025, which came to be dismissed with costs of Rs. 25,000/- by the learned trial court *vide* order dated 24.12.2025. The learned trial court noted that the review application sought to re-agitate issues which had already been dealt with, and that no error apparent on the face of the record had been shown. Aggrieved, the petitioner/proprietorship has approached this Court seeking to invoke its supervisory jurisdiction.

12. The learned counsel for the petitioner has submitted that the learned trial court has gravely erred in allowing substituted service under Order V Rule 20 CPC without ensuring compliance with the provisions under Order V Rule 17. He has submitted that Order V Rule 17 mandates that the process server affix the summons on the door of the defendant's house, or on a conspicuous part of the house, and that without due compliance with the requirements of Rule 17, the learned trial court ought not to have allowed the substituted service under Rule 20 (1A). To this effect, he has placed reliance on a division bench judgment of this Court in ***Harish Mittal v Kishan Gopal Rathi***[4]**.**

13. He has also submitted that the learned trial court has erred in failing to consider that the publication in Delhi based newspapers did not amount to valid service for the petitioner/proprietorship which is admittedly based in Haryana. He has submitted that the intent behind

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

issuing summons gets defeated if the defendant does not receive the summons and is consequently not intimated about the ongoing proceedings. To this extent he has relied on the judgment of the Hon'ble Supreme Court in ***Great Punjab Agro Industries Ltd. v Khushian & Ors.***[5]

14. He has also submitted that in July 2020, the petitioner/proprietorship had changed their address from *Khasra no. 1740* to *"1637, Khemwat No. 3114, Khatoni No. 2397 opposite plot no. 1301, MIE Part B, Bahadurgarh, Haryana – 124507*[6] and despite having supplied raw materials to the petitioner at the new address from 2020 onwards, and thus, having the requisite knowledge of the change of address for four years, the respondent/plaintiff deliberately served summons to defendant no.3/proprietor on the earlier/old address. He has relied on Annexure P-8 and the E-way bills therein from July 2020 onwards to show that the respondent had the due knowledge of the petitioner's changed address and that since the petitioner's address has changed, they are unaware of who refused service, and thus, there can be no deemed service for defendant no.3.

15. He has also submitted that while the impugned order dated 16.10.2025 gave the petitioner liberty to cross-examine PW-1, it did not allow them to rejoin the proceedings from the stage at which they were set *ex-parte viz.* 03.05.2025, thereby depriving them of the right to file a written statement. He has submitted that closure of the right to file a written statement, especially for no fault of the petitioner, will have an adverse effect on the petitioner's defense.

---

[4] **2025 SCC OnLine Del 9474**
[5] **(2005) 13 SCC 503**
[6] Hereinafter "1637 Khemwat"

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

16. Thus, he has submitted that there was no proper service on the petitioner/proprietorship as the pre-requisites of Rule 17 were not complied with, and that the respondent has deliberately chosen to serve the petitioner's proprietor on an old address.

17. *Per contra,* the learned counsel for the respondent has relied on the orders dated 19.11.2024 and 06.02.2025 to submit that the service report to the petitioner/defendant no.1 and defendant no.2 came back unserved, which necessitated the service through substituted means. He has submitted that the respondent had exercised his due diligence in serving the petitioner/proprietorship and it is only after service could not be done through normal modes, despite exercise of reasonable diligence, did the learned trial court allow the application under Order V Rule 20 as abundant caution. He has submitted that the legislative intent of speedy adjudication of a commercial dispute cannot be allowed to be rendered otiose by allowing the defendant to escape service of summons.

18. He has also relied on Rule 20(2) to submit that once the summons were served through the publications, the same had the effect of being served personally. Thus, the petitioner/proprietorship and proprietor/defendant no.2 were served on 24.04.2025. He has also relied on the order dated 06.02.2025 and has submitted that defendant no.3/ proprietor was deemed to be served, and since the order has not been challenged, the same has attained finality. Thus, it is not open to the petitioner to challenge the same at such a belated stage.

19. He has also placed reliance on the petitioner's address in the memo of parties of a complaint filed by the respondent against the petitioner on 20.05.2021 under section 138 of the Negotiable Instruments Act, 1881. He has submitted that the address of the

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

petitioner was mentioned at *Khasra no. 1740* and at *Rajouri* and thus, the petitioner's addresses were absolutely correct, and in the given proceedings, the AR of the petitioner company had also appeared, indicating that the notices sent to the petitioner's address were being properly delivered.

20. Lastly, he has submitted that if the petition is allowed, and the petitioner is allowed to file his written statement, the same would amount to turning the clock back in a commercial suit, and the same would be antithetic to the intent of speedy adjudication.

21. Heard. Perused the records.

22. The controversy in the present petition is confined to the question of whether the petitioner was duly served. The petitioner was proceeded against *ex parte* before filing its written statement, although it was subsequently granted liberty to cross-examine the plaintiff's witnesses to the limited extent of their depositions. If the present petition is allowed, the petitioner would be restored to the stage of the proceedings at which it was proceeded against *ex parte*. Accordingly, if service upon the petitioner and its proprietor through the respective modes adopted is found to be valid, the petitioner would not be entitled to file its written statement. Conversely, if such service is found to be invalid, the petitioner would be entitled to rejoin the proceedings from 03.05.2025 i.e. the day when the petitioner was proceeded *ex-parte.*

23. The present petition turns on the question of service at the designated address. The petitioner has consistently maintained that the address at *Rajouri* was never its own address or one used by it in its official capacity, but was the residence of its authorised representative until 2023. This is borne out by the order dated 19.11.2024, which

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

records that, upon visiting the Rajouri address, the process server was informed by one Rajesh that neither Isha Industries/petitioner, nor Isha Sharma, its proprietor, resided there. Furthermore, the respondent has not placed any material on record to show that the petitioner was ever using the address at *Rajouri* as its office. Thus, Mr. Rajesh's categorical statement given to the process server, as recorded in the order dated 19.11.2024, that neither the petitioner nor its proprietor resided or operated from the address at *Rajouri*, coupled with the respondent's failure to produce any contrary material, indicates that the petitioner was not occupying the address at *Rajouri*.

24. Once it is established that the address at *Rajouri* was not connected to the petitioner/proprietorship at the time of institution of suit or serving of summons, it is apposite to consider the purported service to defendant no.3. To this effect, the petitioner has submitted that the learned trial court has failed to consider the non-compliance with requirement of affixation of summons under Order V Rule 17 and has thus, erred in allowing substituted service. At this point, it is apposite to consider the relevant authorities of law.

25. The Hon'ble Supreme Court in ***Neerja Realtors Private Limited v Janglu (Dead) through Legal Representative***[7] *inter-alia* noted as follows –

"14. Evidently as the report of the bailiff indicates, he was unable to find the defendant at the address which was mentioned in the summons. ***The report of the bailiff does not indicate that the summons were affixed on a conspicuous part of the house, at the address mentioned in the summons. There was a breach of the provisions of Order 5 Rule 17. When the application for substituted service was filed before the trial court under Order 5 Rule 20, a cryptic order was passed on 2-9-2011. Order 5 Rule 20 requires the***

[7] **(2018) 2 SCC 649**

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

court to be satisfied either that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason, the summons cannot be served in the ordinary way. Substituted service is an exception to the normal mode of service. The Court must apply its mind to the requirements of Order 5 Rule 20 and its order must indicate due consideration of the provisions contained in it. *Evidently the trial court failed to apply its mind to the requirements of Order 5 Rule 20 and passed a mechanical order…." (emphasis supplied)*

26. The Hon'ble Supreme Court in ***Sushil Kumar Sabharwal v Gurpreet Singh and Ors.***[8]**,** where the question for determination was whether in view of the refusal to accept service of summons, and the failure of the process server to affix the summons on the wall, the same could amount to a valid service, noted *inter-alia* as follows –

"8. ***We find several infirmities and lapses on the part of the process server. Firstly, on the alleged refusal by the defendant either he did not affix a copy of the summons and the plaint on the wall of the shop or if he claims to have done so, then the endorsement made by him on the back of the summons does not support him, rather contradicts him. Secondly, the tendering of the summons, its refusal and affixation of the summons and copy of the plaint should have been witnessed by the persons who identified the defendant and his shop and witnessed such procedure…"****(emphasis supplied)*

27. Lastly, the Hon'ble Division Bench of this Court in ***Harish Mittal (supra)*** noted *inter-alia* as follows –

"26. If we believe that the respondent/plaintiff had continued its business relations with the appellant/defendant post February, 2018, coupled with the fact that the recovery suit was predicated on the invoices from the month of July, 2018 onwards, having regard to the fact that the suit was filed in December, 2021, it is verily possible that the respondent/plaintiff had knowledge of the correct addresses of the appellant/defendant. ***If that is so, the mere service by substituted mode under Order V Rule 20 CPC would not be sufficient or deemed to be an effective service of summons of the suit upon the***

[8] **(2002) 5 SCC 377**

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

appellant/defendant. It is so for the reason as a last resort and unless the ordinary mode as prescribed in Order V, CPC till service through affixation under Order V Rule 17, CPC is exhausted, the defendant cannot be deemed to be served in accordance with law. (emphasis supplied)

28. Upon a conjoint reading of Order V Rule 17, Rule 20 and upon a conspectus of perusal of the aforementioned authorities, it becomes clear that in case the defendant refuses service, or the process server is unable to locate the defendant at the given address, the process server shall affix a copy of the summons at a conspicuous portion of the house or address, as the case may be, along with a report giving endorsement of the circumstances in which the copy of the summons were given, along with relevant details of the witnesses who witnessed the service of summons. In absence of compliance with the requisite formalities of affixation and endorsement, as envisaged under Rule 17, the service cannot be considered to be valid service in law.

29. In the present case, the defendant no.3/proprietor was deemed to be served by the learned trial court *vide* order dated 06.02.2025 as they had refused receipt of service. However, since it is not borne from the record whether the process server affixed the summons at defendant no.3's address or complied with any other requirement of Rule 17, the deemed service cannot be considered to be a valid service.

30. With respect to the substituted service allowed for the petitioner/proprietorship and defendant no.2/proprietor, a perusal of Rule 20 and the ratio in ***Neerja Relators (supra),*** makes it clear that the learned trial court is required to be satisfied that the defendant is avoiding service, and that the defendant cannot be served in any other ordinary way. In other words, the learned trial court is required to

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

examine the circumstances regarding the prior attempts at service, and thereafter pass a reasoned order to the effect that the defendant is either deliberately avoiding service, or cannot be served in any other manner, thereby allowing substituted service. Substituted service ought not to be allowed as a matter of practice, and the same has also been upheld in ***Harish Mittal (supra).***

31. In the present case, the learned trial court allowed the respondent's application under Order V Rule 20 *vide* order dated 17.03.2025, however, the same does not record any reasons showcasing that the petitioner/proprietorship or its proprietor has been evading service, or that they cannot be served through ordinary modes.

32. A perusal of the orders prior to 17.03.2025 passed by the learned Trial Court does not justify the resort to substituted service. The order dated 06.02.2025 records that neither the petitioner/proprietorship nor its proprietor was found at the address which had been furnished by the respondent/plaintiff in the memo of parties, namely, "*J-11/86, Rajouri Garden, New Delhi-110027"*, whereupon the process server affixed the summons at the said address. However, the record indicates that the respondent was aware of the petitioner's addresses at *Khasra No. 1740* and *1637 Khemwat* well before the summons were issued. The E-way bills reflect that the respondent had dispatched pig iron to the petitioner at *Khasra 1740* Bahadurgarh as early as 25.07.2017 and from July 2020 had supplied pig iron to *1637 Khemwat* Bahadurgarh.

33. In fact, the memo of parties in the complaint under Section 138 of the Negotiable Instruments Act categorically notes that the petitioner's address is at *Rajouri* and *Khasra 1740* Bahadurgarh. Thus,

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

when the summons were returned unserved from the address at *Rajouri* on 06.02.2025, the respondent was already aware of two other addresses at Bahadurgarh at which the petitioner and its proprietor could have been served. Yet, no attempt was made to effect service at either of the petitioner's addresses in Bahadurgarh before resorting to substituted service. The respondent ought to have served the petitioner at both the addresses in Bahadurgarh, thereby fulfilling the pre-requisites under Rule 20 before resorting to substituted service. *Dehors* any attempt to serve the petitioner on the two addresses in Bahadurgarh, it cannot be said that the petitioner could not have been served in the ordinary way, as envisaged under Rule 20.

34. From the aforementioned analysis, the circumstances of the present case indicate that the resort to substituted service under Order V Rule 20 CPC is premature, particularly in the absence of any attempt to serve the petitioner at its alternative addresses at Bahadurgarh, which was within the respondent's knowledge. It is incumbent upon a plaintiff to make bona fide and diligent efforts to effect service at the defendant's known addresses, as the purpose of summons is to bring the proceedings to the defendant's notice and afford it an opportunity to respond. Since the respondent was aware of the alternative addresses of the petitioner, every reasonable effort ought to have been made by the respondent/plaintiff to serve the petitioner on their last known addresses.

35. Thus, this Court is of the opinion that the petitioner/proprietorship has displayed a good and sufficient cause for their absence. The deemed service to defendant no.3 cannot be held to be a valid service as per law as the process server did not comply with the requirements under Rule 17 and 20, and the same has been

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20

overlooked by the learned Trial Court. The substituted service sought to be done through publication to the petitioner and its proprietor also cannot be held to be a valid service in law as the respondent did not serve the petitioner at the alternative addresses at Bahadurgarh, which were known to the respondent. Since the service of summons is improper and *non-est* in law, the petitioner ought to be allowed to rejoin proceedings from the date and stage he was set *ex-parte viz.* 03.05.2025.

36. Accordingly, this Court is of the opinion that the impugned orders cannot be sustained and the orders dated 03.05.2025, 16.10.2025 and 24.12.2025 are set aside. The learned trial court is directed to allow the petitioner/proprietorship an opportunity to file his written statement in accordance with the provisions under Order VIII CPC.

37. The present petition is allowed and disposed of. Pending applications, if any, are also disposed of.

AJAY DIGPAUL, J.

NOVEMBER 5, 2026/ar/sg

Signature Not Verified
Signed By:ANKITA RAI
Signing Date:05.11.2026
20:28:20