

HIGH COURT OF PUNJAB AND HARYANA**Bench: Hon'ble Mrs. Justice Alka Sarin****Date of Decision: 7th June 2024**

CIVIL REVISION JURISDICTION

CR-3058-2019 (O&M)

SAKATTAR SINGH ...Petitioner**VERSUS****MANJIT SINGH AND OTHERS ...Respondents****Legislation:**

Article 227 of the Constitution of India

Order 9 Rule 13 of the Code of Civil Procedure, 1908

Subject: Civil revision petition challenging the dismissal of an application under Order 9 Rule 13 CPC to set aside an ex-parte judgment and decree.**Headnotes:**

Civil Procedure – Setting Aside Ex-Parte Decree – Civil Revision against lower court orders dismissing application to set aside ex-parte judgment and decree – Plaintiff-respondent filed a suit for possession by way of specific performance of an agreement to sell against the petitioner – Ex-parte decree passed – Application to set aside ex-parte decree on grounds of non-service at correct address dismissed by trial court and appellate court – High Court held that the petitioner had knowledge of the decree as of 14.05.2012 but filed the application on 17.05.2013 – No explanation for delay provided – Application

dismissed for lack of merit – Revision petition dismissed. [Paras 1-7]

Service of Summons – Address Discrepancy – Analysis – Held – Summons were served at the same address as mentioned in the execution petition, which the petitioner acknowledged – Petitioner’s contention of incorrect address found baseless – Delay in filing application under Order 9 Rule 13 CPC not justified by any evidence. [Paras 3-6]

Decision – Dismissal of Revision Petition – Court found no illegality or irregularity in the orders of the trial and appellate courts – Revision petition dismissed – No merit found in petitioner’s claims. [Paras 7]

Referred Cases:

None

Representing Advocates:

Mr. B.S. Jaswal for the petitioner

Mr. A.S. Salar for respondent No.1

ALKA SARIN, J.

1. The present civil revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 15.02.2017 and order dated 11.03.2019 whereby the application filed by defendant No.1-petitioner under Order 9 Rule 13 of the Code of Civil Procedure, 1908 has been dismissed.
2. The brief facts relevant to the present *lis* are that in 2002 the plaintiff-respondent No.1 herein filed a suit for possession by way of specific performance of an agreement to sell dated 11.11.1999 against the defendants i.e. petitioner and respondent No.2 – Shamsher Singh (since deceased) in respect of Khasra

No.150 min measuring 125 sq. yds. situated in Village Kale Ghanupur Tehsil and District Amritsar on payment of Rs.30,000/- as also for permanent injunction. The suit was decreed *ex-parte* on 10.01.2007. In 2013 when the plaintiff-respondent No.1 had taken out execution proceedings, the defendant No.1-petitioner filed an application uunder Order 9 Rule 13 CPC for setting aside the *ex-parte* judgment and decree dated 10.01.2007. The case set-up by the defendant No.1-petitioner was that he never served and infact a wrong address was given in the plaint intentionally and the address of defendant No.1-petitioner was given as 5-A, Mohindra Colony, Model Town, Amritsar instead of 5-A, Majitha House, Rani Ka Bagh, Amritsar and consequently he was proceeded against *ex parte* and an *ex parte* judgment and decree was passed on 10.01.2007. It was further averred that it was only when the summons in the execution were received that he came to know of the *ex parte* judgement and decree dated 10.01.2007 and thereafter filed the present application. The said application was contested by plaintiff-respondent No.1 who filed a reply thereto. Vide impugned order dated 15.02.2017 the application was dismissed by the Trial Court. Aggrieved by the same an appeal was preferred by the defendant No.1-petitioner which appeal was also dismissed by the Appellate Court vide impugned order dated 11.03.2019. Hence, the present revision petition.

3. Learned counsel for the defendant No.1-petitioner would contend that the defendant No.1-petitioner was never served at the correct address and that the address mentioned in the plaint was incorrect. It is further the contention of the learned counsel that both the Courts have not appreciated that the correct address of defendant No.1-petitioner was 5-A, Majitha House, Rani Ka Bagh, Amritsar, however, the address given in the plaint was 5-A, Mohindra Colony, Model Town, Amritsar.

4. *Per contra* the learned counsel for the plaintiff-respondent No.1 would contend that the defendant No.1-petitioner was duly served, however, he chose not to appear and an *ex parte* judgment and decree was passed on 10.01.2007. It is further the contention of the learned counsel that the defendant No.1-petitioner put in appearance before the Executing Court on

14.05.2012, however, the application for setting aside *ex parte* judgement and decree dated 10.01.2007 was filed on 17.05.2013 and there was no explanation forthcoming for the said delay.

5. I have heard the learned counsel for the parties.

6. In the present case though the case set-up by defendant No.1- petitioner is that he was never served at the correct address, however, it is a matter of record that in the execution petition the very same address as given in the plaint was mentioned. Defendant No.1-petitioner was duly served and put in appearance in the execution proceedings. The learned counsel for the defendant No.1-petitioner is not in a position to deny the fact that even before the Executing Court the defendant No.1-petitioner had put in appearance through his counsel on 14.05.2012. The date of knowledge would start, even if the case of the petitioner is accepted at its face-value, from 14.05.2012. The application under Order 9 Rule 13 CPC was filed on 17.05.2013 i.e. after more than a year. There is absolutely no explanation forthcoming for the said delay. On a query put by the Court to the learned counsel for the defendant No.1-petitioner as to the explanation for the delay in filing the application under Order 9 Rule 13 CPC even after the admitted date of knowledge i.e. 14.05.2012, the learned counsel has admitted that there is nothing on the record to explain the delay. Infact, the application under Order 9 Rule 13 CPC proceeds on the premise that it was being filed within time from the date of knowledge. There was no application or even a prayer for condonation of delay. Further still, both the Courts had noticed that though the defendant No.1-petitioner claimed that he was not served at the address, however, in the execution proceedings, on the same very address, the defendant No.1-petitioner received the summons and put in appearance through his counsel.

7. In view of the above and in view of the fact that even if the date of knowledge is considered to be 14.05.2012, there is no explanation given for the delay in filing the application under Order 9 Rule 13 CPC which was filed after a delay of more than one year nor was any application filed or even a prayer made for condonation of delay, I do not find any merit in the present revision petition. There is no illegality or irregularity in the impugned orders. The revision petition is dismissed. Pending applications, if any,

also stand disposed off.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.