

MISC DJ 263/26
PAWAN KUMAR
Vs.
SANJAY VARSHNEY

07.04.2026

Present : Ms. Renu Tyagi and Sh. Kuldeep Kumar Gaur, Ld.
Counsels for applicant.

The present application has been filed by the applicant/defendant under Order IX Rule 13 r/w Section 151 of the Code of Civil Procedure, 1908 seeking setting aside of the ex-parte judgment and decree dated 21.12.2022 passed against him.

The applicant also filed an application under section 5 of the Limitation Act seeking condonation of delay in filing application under Order IX rule 13 CPC.

On point of limitation, it has been argued that the defendant was not aware about the passing of ex-parte decree as he had never received summons of the suit. It is argued that the fact of passing ex-parte decree came into knowledge of the defendant only upon receipt of notice of the execution petition bearing no. 233/2025.

On merits, it is averred by the applicant/defendant that the service of summons of the suit by way of affixation is not proper as there was neither any witness to the affixation nor any photograph of affixation was taken by the concerned process server.

Per contra, it is evident from the records that the summons were duly issued and the process servers have reported service upon the applicant in their respective reports. The reports of the process servers carry a presumption of correctness, having been prepared on oath in the discharge of official duties. At this stage, it is pertinent to note that a mere denial of the process server's reports is not sufficient.

It is not the case of the applicant that he was not been residing at the address mentioned in the plaint. Rather, the notice of execution petition was also served upon the applicant at the same address. In the instant application the applicant has averred that one permanent househelp namely Mahender Yadav was residing at the said premises along-with the family of applicant. The report dated 13.08.2018 of the process server specifically records that said Mahender refused to open the main door though he admitted that defendant resided at the said address.

Thereafter, summons of the suit were ordered to be served by way of affixation and same were duly affixed at the address of the applicant/defendant as mentioned in the process server report dated 08.04.2019.

In view of the aforesaid discussion, this Court is of the considered opinion that the applicant has failed to show that the summons were not duly served upon him. Further the notice of execution petition was served upon the applicant on 14.01.2026, however, the instant application was filed on 30.03.2026. No ground has been mentioned in the delay application for filing the instant application beyond stipulated period of limitation.

Accordingly, the present applications under Order IX Rule 13 CPC as well as under section 5 of the Limitation Act are hereby dismissed.

Main case file be sent back.

File be consigned to record room as per rules.

(Hem Singh)
District Judge-01
(East)/KKD/Delhi/07.04.2026