

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 41 of 2020

Reserved on 19.11.2025

Date of decision 25 .11.2025.

Gambhari ...Petitioner.

Versus

Ved Prakash & another ...Respondents.

Coram:

The Hon’ble Mr. Justice Satyen Vaidya, Judge.

*Whether approved for reporting?*¹ Yes.

For the petitioner: Mr. Tara Singh Chauhan, Sr.
Advocate with Mr. Surya
Chauhan, Advocate.

For the respondents: Mr. Sanket Sankhyan, Advocate,
for the respondents.

Satyen Vaidya, Judge:

By way of instant petition, the petitioner has invoked revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure (for short the ‘Code’), to assail order dated 9.1.2020, passed by the learned District Judge Bilaspur in Civil Miscellaneous Appeal No. 5/14 of 2019, whereby the order dated 31.5.2019, passed by learned Civil Judge, Bilaspur in CMA No. 193/6 of 2009 has been affirmed.

¹ ***Whether reporters of Local Papers may be allowed to see the judgment?***

2. The respondents herein (hereinafter referred to as the plaintiffs) had filed Civil Suit No. 54-1 of 2002 against the petitioner herein (hereinafter referred to as the defendant) for recovery of Rs. 54,450/- in the Court of learned Civil Judge, Bilaspur, District Bilaspur, H.P. The defendant was proceeded against ex-parte in the said suit and resultantly, an ex-parte decree was passed by the learned Civil Judge, Bilaspur on 30.7.2007 in favour of the plaintiffs.

3. The defendant filed an application under Order 9 Rule 13 of the Code for setting aside ex-parte decree dated 30.7.2007, passed in Civil Suit No. 54-1 of 2002. The application was presented on 16.10.2009. Another application under Section 5 of the Limitation Act was also filed, seeking condonation of delay, if any, in filing the application for setting aside ex-parte decree. However, later, the application under Section 5 of the Limitation Act was withdrawn by the defendant.

4. The setting aside of ex-parte decree was sought on the ground that the defendant had never been served in the suit. It was alleged that neither the summon was issued to the defendant nor she was ever served in accordance with law. The factum of passing of ex-parte decree had come to

the notice of defendant on 5.10.2009, when Patwari Halqua had disclosed such fact. Thereafter, the defendant had applied for certified copies of the judgment and decree dated 30.7.2007, which was received by the husband of the defendant on 13.10.2009 and the application under Order 9 Rule 13 of the Code was filed thereafter without any further delay.

5. It was also alleged that the plaintiffs had managed the report of fictitious service of summon on the defendant through postman, who was near relative of the plaintiffs.

6. The application was contested by the plaintiffs. The averments made in the application were denied. It was averred that the summon was issued to the defendant through registered post (acknowledgment due). The defendant had refused to accept the same and accordingly, she was proceeded against ex-parte. The fact that the defendant was informed by the Patwari Halqua about the passing of ex-parte decree against her was specifically denied by the plaintiffs.

7. The learned trial Court framed the following issues: -

- “1. *Whether there are sufficient grounds to set aside the exparte decree dated 30.7.2007? OPA*
2. *Whether the application is not maintainable in the present form? OPR*
3. *Whether the application is barred? OPR*
4. *Whether the application has been filed without cause of action? OPR*
5. *Relief.”*

Issues No. 1 and 4 were answered in negative, whereas all other issues were answered in affirmative and the application of the defendant for setting aside the ex-parte decree was dismissed.

8. Aggrieved against the order of dismissal of the application under Order 9 Rule 13 of the Code, the defendant preferred appeal under Order 43 Rule 1 of the Code before the learned District Judge, Bilaspur, which also came to be dismissed vide order impugned by way of instant petition.

9. I have heard learned counsel for the parties and have also gone through the record carefully.

10. In order to prove her case, the defendant had examined herself as her own witness. In addition, the son-in-law of the defendant Sh. Gopal had also appeared as AW-2. Additionally, the official from the office of Superintendent of Post Office, Bilaspur was examined as AW-2A. On the

other hand, the plaintiff Ved Prakash appeared as his own witness. The postman named Ranjit Singh, who had allegedly tendered the registered letter to the defendant, was examined as RW-2.

11. The defendant tried to prove that she was not served with a notice of the Court. On the other hand plaintiffs by examining the postman (RW-2) had tried to discharge the burden of proof. The defendant had also led the evidence to the effect that on attaining the knowledge about the passing of ex-parte decree, she had made a complaint to the postal authorities and an inquiry had been initiated against the postman.

12. Learned trial Court had relied upon the report of registered letter Ext. PA (RW-2/B), according to which, the letter was returned to the sender, as the addressee had refused to accept the same. It had also weighed with the learned trial Court that the defendant could not be presumed to be having no knowledge of registered letter, as she had been indulging in litigation for past forty years. In this manner, according to the learned trial Court, the due service of summon had been effected on the defendant.

13. The learned trial Court also found the application filed by the defendant under Order 9 Rule 13 of the Code to be time barred. Since the defendant had withdrawn the application for condonation of delay, the learned trial Court found itself unable to adjudicate on the reason of delay.

14. The learned District Judge, Bilaspur while dismissing the appeal of the defendant came to the conclusion that the rules of Punjab were applicable to the State of Himachal Pradesh and as per State Amendment in Order 5 Rule 10 of the Code, a proviso had been added that in case the plaintiffs so wishes, the Court may serve the summons in the first instance by registered post (acknowledgement due) instead of in the mode of service relied upon in the rules. Thus, the learned District Judge has held that though the Court had not issued summon to the defendant by ordinary process, the mode effected for sending the summon through registered post was sufficient. Believing the report of the postman (RW-2) as correct, the contention raised by the defendant was rejected.

14. The learned District Judge further held that as per the State amendment made to Rule-13 of Order 9, the provisions of Section 5 of the Limitation Act were made

applicable to the application under sub-Rule (9) of Rule 13 of Order 9 and thus, the application under Order 9 Rule 13 of the Code was required to be accompanied by application under Section 5 of the Limitation Act for condonation of delay. Since the defendant had withdrawn her application for condonation of delay filed under Section 5 of the Limitation Act, the learned District Judge had held the application to be barred by limitation.

15. Reliance was placed by the learned District Judge on the report of the postman. The allegation of the defendant that the postman was related to the plaintiffs was found not proved. It has also been held that though the defendant had leveled allegation of fraud but she had failed to prove the same.

16. Admittedly, no summon was issued to the defendant through ordinary process. Record reveals that on 21.6.2002, the learned trial Court had passed the following order:-

“Present Sh. K.R. Sharma, Advocate.

Objection removed. It be registered. Issue notice to the defendant for 9.8.2002.”

17. Order 5 Rule 9 (1) of the Code mandated the issuance of summon to the defendant through ordinary process of the Court, unless otherwise directed by the Court. As per Order 5 Rule 19 (a), as it was before its repeal w.e.f. 1.7.2002, the summon through registered post (acknowledgment due) was also mandatory in addition to the ordinary process.

18. As noticed above, the learned trial Court in Civil Suit No. 54-1 of 2002 had not exercised jurisdiction under Order 5 Rule 9 (1) to exempt the issuance of summon to the defendant through ordinary process. The record further suggests that the summon had not been issued to the defendant through ordinary process. In fact, on the next date i.e. 9.8.2002, the defendant was ordered to be proceeded ex-parte on the basis of report, made on the registered letter, to the effect that the defendant had refused to accept the notice.

19. The reliance placed by the learned District Judge on the State amendment in Order 5 Rule 10 also is misplaced. There is nothing on record to suggest that the plaintiffs had ever wished that the defendant be served only through registered post (acknowledgement due) in the first

instance instead of ordinary process. There is no finding of fact recorded by either of the Courts in this behalf. Thus, it is established that the summon had neither been issued to the defendant through ordinary process nor was any service effected through such process. No doubt, RW-2 by stepping into the witness box had deposed that the report made by him on registered letter was correct, having factual basis, however, in order to assess the authenticity of such report, the other attending circumstances were required to be looked into. Both the Courts have failed to do so, which amounts to non-exercise of jurisdiction vested in them.

20. It cannot be ignored that reports on summons or registered letters can be manipulated. It is for such reason that prior to 1.7.2002, issuance of summon was made mandatory through both modes i.e. ordinary process as also through registered post (acknowledgement due). It is more often than not that the Presiding Officer of the Court may not be aware of the intended mischief, if any. As is evident from the record, the learned trial Court had not exempted the issuance of summon through ordinary process. It had not exercised jurisdiction to exempt the issuance of such process on the asking of plaintiffs either. It being so, under what

circumstances, the ordinary process was not issued was a fact to be considered but none of the Courts have gone into this aspect of the matter. The material was available to suspect the conduct of non-issuance of summons to the defendant through ordinary process but it has not been taken into consideration at all. Though, presumption of truth is attached to the report made on registered letter under Section 27 of the General Clauses Act but such presumption is rebuttable. As noticed above, there was material to suspect the authenticity of report made on the registered letter, which conveniently has been ignored and thus, the impugned order suffers from illegality inasmuch as both the Courts have failed to exercise jurisdiction vested in them in accordance with law.

21. As per averments made in the application under Order 9 Rule 13 of the Code, the defendant had approached the Court for setting aside ex-parte decree within thirty days from the date of knowledge. The application of defendant could have been dismissed being time barred after recording the findings on the issue as to the date of knowledge, alleged by the defendant. This aspect has been decided against

defendant on assumption that she had been served through notice by way of registered letter.

22. Since, both the Courts have been held to have not exercised jurisdiction vested in them in accordance with law on the ground that the material factual aspect has been ignored, the issue that the defendant had knowledge of the ex-parte decree also cannot be said to have been rightly decided.

23. In result, order dated 9.1.2020, passed by the learned District Judge Bilaspur in Civil Miscellaneous Appeal No. 5/14 of 2019 and the order dated 31.5.2019, passed by learned Civil Judge, Bilaspur in CMA No. 193/6 of 2009 are set aside. The matter is remanded back to learned trial Court to decide the application of the defendant under Order 9 Rule 13 afresh, keeping in view the observations made hereinabove.

24. The petition is disposed of accordingly. Pending applications, if any, also stand disposed. Record be sent back immediately.

25th November, 2025
(kck)

(Satyen Vaidya)
Judge