

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 15930/2025

Devraj S/o Late Kailaprasad Sharma

-----Petitioner

Versus

Rajendra Prasad Khatri S/o Nandlal Khatri and Anr.

-----Respondents

For Petitioner(s) : Mr. Ghanshyam Dass

For Respondent(s) :

HON'BLE MR. JUSTICE MANEESH SHARMA

Order

16/10/2025

1. The present writ petition has been filed against the order dated 03.10.2025 passed by the Civil Judge & Judicial Magistrate No.2, Alwar, in Civil Execution Petition No.36/40/2022, whereby the petitioner has been detained under civil imprisonment for a period of three months.

2. Learned counsel for the petitioner submits that the respondent No.1/plaintiff-decree holder filed a (CIS No.63/2015) Civil Suit No.34/63/2015 for declaration of title and permanent injunction, the said suit came to be decreed *ex-parte* vide judgment and decree dated 12.05.2022. He further submits that the petitioner had taken due steps by engaging a lawyer in the said suit, and also filed a written statement. However, due to some miscommunication regarding the date fixed for hearing in the suit, he could not appear in the original suit. Therefore, the *ex-parte* decree dated 12.05.2022 came to be passed against him.

3. That prior to the petitioner being arrested in furtherance of the warrants issued by the Executing Court, the petitioner could

not gain any knowledge about the said *ex-parte* decree dated 12.05.2022 and though the petitioner is willing to file an application under Order 9 Rule 13, Code of Civil Procedure, 1908 (CPC) explaining his non-appearance before the Court below, the petitioner has been detained under civil imprisonment for a period of three months vide order dated 03.10.2025. He also submits that the petitioner has due regard for the judicial orders and wants to file an application under Order 9 Rule 13 CPC for recalling of the *ex-parte* decree dated 12.05.2022. He further submits that the petitioner has no intention to defy the judicial orders i.e. *ex-parte* decree dated 12.05.2022 and has been detained without following the due procedure.

4. Heard.

5. Taking into consideration the fact that the suit for declaration of title and permanent injunction filed by the respondents came to be decreed *ex-parte* due to lack of communication between the petitioner and his lawyer, and that the petitioner has been detained in civil imprisonment prior to taking resort of recalling the *ex-parte* decree dated 12.05.2022 by filing an application under Order 9 Rule 13 CPC.

6. From the record of the case, it is evident that the petitioner has not delayed the execution intentionally, but rather due to lack of knowledge as well as a family bereavement, wherein his only son *Dev Sharma* expired on 15.07.2025, the petitioner suffered a mental shock, and thus the petitioner could not get a proper opportunity to be represented before the learned Executing Court.

7. In that view of the matter, let notice be issued to the respondents, returnable within four weeks.

8. In the meanwhile, the operation and effect of the order dated 03.10.2025 passed by the Civil Judge & Judicial Magistrate No.2, Alwar, whereby the petitioner has been detained under civil imprisonment for a period of three months, is hereby stayed.

9. The Jail Authorities are hereby directed to release the petitioner forthwith, subject to the petitioner submitting a personal bond to the tune of Rs.25,000/-, with a stipulation of all requisite conditions prior to release, including that, if the present writ petition fails, the petitioner will surrender himself before the learned Executing Court.

10. The Registrar (Judicial) is directed to inform the concerned Jail Authorities in this behalf through Email, along with a copy of this Order for necessary arrangement and compliance.

11. List the matter after six weeks.

(MANEESH SHARMA),J