



CR-5994-2025 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CR-5994-2025 (O&M)

Reserved on:17.09.2025

Pronounced on:24.09.2025

M/s Unnati Industrial Corporation

... Petitioner

Versus

M/s Balbir Singh and Company

...Respondent

CORAM : HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Vikas Bali, Advocate
for the petitioner.

Mr. Anish Setia, Advocate
Mr. Surinder Singh, Advocate
Ms. Baljit Kaur, Advocate
for the respondent.

AMARINDER SINGH GREWAL, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India seeking setting aside of the impugned order dated 19.08.2025 (Annexure P-25) passed by the learned Judicial Magistrate 1st Class, Jalandhar whereby the stay application filed in the application under Order IX Rule 13 CPC read with Section 151 CPC, seeking stay of the operation of the judgment and decree dated 18.11.2022 (Annexure P-16) has been dismissed.

2. In brief, the facts, as culled out from the petition, are that the respondent-M/s Balbir Singh and Company and its sister concern namely M/s Balbir Singh and Sons, both proprietorship concern, filed two civil suits for settlement of account/rendition of accounts against the petitioner-firm, which were dismissed by the learned trial Court vide judgments and decrees dated 16.08.2011 and 20.11.2015. Aggrieved against the aforesaid judgments and decrees passed by the learned trial Court, both the respondent and its sister



concern preferred their respective appeals before the learned Additional District Judge, Jalandhar. The appeal preferred by the respondent was allowed vide judgment and decree dated 17.01.2017 whereby while passing a preliminary decree, the respondent was held entitled to settlement of accounts for the business deals between the petitioner and the respondent from 01.04.1995 to 14.10.2002 along with interest @15% per annum on each payment found due from the date of payment accrued till the date of actual realization. However, the appeal preferred by the sister concern of the respondent stood dismissed vide judgment and decree dated 16.05.2017. Against the judgment and decree dated 17.01.2017 passed by the learned Additional District Judge, Jalandhar, the petitioner herein preferred an appeal before this Court; whereas the sister concern of the respondent being aggrieved against the judgment and decree dated 16.05.2017 also came in appeal before this Court. Both the aforesaid appeals are pending consideration before this Court.

3. During the pendency of aforesaid regular second appeals before this Court, the respondent filed an application dated 21.07.2017 for grant of final decree in pursuance of the judgment and decree dated 17.01.2017 passed by the learned Additional District Judge, Jalandhar. In the said application, notice was issued to the petitioner for 29.09.2017 and since the petitioner had not appeared on 29.09.2017, he was proceeded against *ex parte*. Thereafter, on the application filed by the respondent, a local commissioner was appointed, who was examined as AW-1 and on the basis of his report and averments made by the respondent, an *ex parte* final decree dated 18.11.2022 was passed for recovery of an amount of Rs.45,15,273.90 for settlement of account of business dealings between the respondent and the petitioner from 01.04.1995 to 14.10.2002 along with interest



@15% per annum after 31.12.2020 (interest calculation already made upto 31.12.2020 by the local commissioner as explained in his report) till the actual realization.

4. After passing of the final decree dated 18.11.2022, an execution application was filed before the Civil Judge (Junior Division), Jalandhar (hereinafter referred to as the Executing Court) wherein vide order dated 11.07.2023, notice was issued to the petitioner for 04.08.2023. However, despite the fact that the petitioner was not duly served, the respondent immediately filed an application under Section 39 CPC for transfer of the decree to the Court at Ahmedabad on the ground that the petitioner is not having any movable or immovable properties in the area of Jalandhar. Vide order dated 01.08.2024, the Executing Court ordered the parties to appear before the learned Civil Judge (Senior Division), Ahmedabad on 01.10.2024 at 10:AM sharp. The learned Judge, Commercial Court, Ahmedabad vide order dated 07.04.2025 had issued notice to the petitioner to appear on 08.05.2025 and on receipt of notice, the petitioner caused his appearance on 08.05.2025 and came to know about the aforesaid proceedings. Thereafter, petitioner had filed an application under Order IX Rule 13 CPC seeking setting aside of the ex parte final decree dated 18.11.2022 along with application of stay of said decree. However, vide order dated 19.08.2025, the application seeking stay of the petitioner has been dismissed by the learned Judicial Magistrate 1st Class, Jalandhar. Hence, the revision petition.

5. Learned counsel for the petitioner submitted that the order dated 05.08.2017 did not direct service through registered cover for 29.09.2017 and therefore, the said service cannot be deemed to be valid service. Further, on



29.09.2017 itself, the learned Executing Court proceeded the petitioner as against *ex parte*. Even the final decree dated 18.11.2022 was passed *ex parte* behind the back of the petitioner solely on the basis of report of the local commissioner, who was appointed on the application and suggestion of the respondent. It was further submitted that during the pendency of the regular second appeal before this Court, execution of the *ex parte* final decree would result into miscarriage of justice, as the very purpose of the appellate remedy would be defeated. In support of his contentions, learned counsel for the petitioner had relied upon the judgment passed by a Coordinate Bench of this Court in ***Davinder Pal Singh and another Vs. Narinder Pal Singh and others 2016 (3) RCR (Civil) 194*** to contend that during the pendency of application under Order IX Rule 13 CPC, it will not be appropriate by the Executing Court to rush with the execution till the decision of the said application. To similar effect, reliance was placed upon judgments passed by Coordinate Benches of this Court in ***Parmod alias Rinku Vs. Shri Krishan Trading Company and another*** passed in C.R. No.6833 of 2023 on 05.03.2024 and ***Makhan Singh and others Vs. Harbans Lal and another 2017 (1) RCR (Civil) 288***.

6. Per contra, learned counsel for the respondent submitted that the petitioner remained absent before the learned Appellate Court and in that eventuality, final decree was passed on 18.11.2022. In the execution proceedings as well, since the petitioner did not cause appearance, the Executing Court having left with no other option proceeded him as against *ex parte*. Since no *prima facie* case was made out by the petitioner seeking stay of the operation of the final decree, the learned Judicial Magistrate 1stClass, Jalandhar has rightly dismissed the stay application vide order dated 19.08.2025. He further submitted that stay



for execution of money decree cannot be granted by the Appellate Court without deposit of decretal amount. In support of his contention, he relied upon the judgment passed by the Hon'ble Supreme Court in *M/s Malwa Strips Pvt. Ltd. Vs. M/s Jyoti Ltd.* passed in Civil Appeal Nos.7410-7411 of 2008 decided on 18.12.2008.

7. I have heard learned counsel for the parties and have perused the paper book with their able assistance as well as the case laws cited.

8. It would be apposite to reproduce zimni orders dated 05.08.2017 and 29.09.2017 passed by the learned Executing Court, which are as under:-

*“Present: Sh. Hans Raj Sharma, Adv., counsel for decree holder
Report of Ahlmad received. Now notice to respondent be
issued for 29.09.2017.*

*Supreet Kaur, PCS
JMIC/Jalandhar
UID/PB0370*

Dated:05.08.2017

Present: Sh. Hans Raj Sharma, Adv., counsel for decree holder
None for respondent/J.D.s.

As per the report of Ahlmad notice issued to the respondent through RC and the postal receipt is dated 19.08.2017 has placed on the record. Period of 30 days has already expired but RC not received back. The respondent/J.D.s deems to be served. However, none has been appeared on behalf of J.D.s. It is already 04:00 PM. No further wait is justified. It appeared that respondent/J.D.s is not willing to contest the present complaint. Hence, respondent/J.D.s is ordered to be proceeded against ex parte. Now to come up on 16.11.2017 for consideration.

*Supreet Kaur, PCS
JMIC/Jalandhar
UID/PB0370*

Dated:29.09.2017”



9. A perusal of the zimni order dated 05.08.2017 reveals that notice was issued to the respondent (petitioner herein) for 29.09.2017. Further, a perusal of zimni order dated 29.09.2017 reveals that as per report of the Ahlmad, notice was issued to the petitioner herein through RC and the postal receipt dated 19.08.2017 was placed on record and since, RC was not received back and period of 30 days had expired, petitioner was ordered to be proceeded against *ex parte*. From a conjoint reading of both the aforesaid zimni orders, it is apparent that service upon the petitioner was not ordered through RC only and there is no reference made in the zimni order dated 29.09.2017 that service was attempted to be effected through other modes viz; through the process of the Court, dasti process or through counsel appearing for the party in any other proceedings connected with the case. Therefore, without resorting to any other mode of service, the Executing Court rushed with the execution proceedings and declared the petitioner *ex parte* on the very first date after ordering notice. No doubt, there is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same or even without endorsement but the said presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same.

10. At this juncture, it is also worthwhile to reproduce relevant part of Part B, Chapter 7 of Volume IV of the Punjab and Haryana High Court Rules and Order, which deals with service of process as under:-

“PART B—SERVICE OF PROCESS



(a) Mode of Service

1. (i) Every attempt should be made to effect personal service in the first instance and failing that service on an agent or a member of the family. The process-server should go again and again for this purpose, if there is time before the date fixed for effecting/scrutiny of service, and obtain for each successive attempt at service, attestation of witnesses different from those who have attested reports of previous attempt (s). In other words service in any of the ways enumerated in Order V, Rules 12 to 16 of the Code of Civil Procedure, should be insisted upon and service by affixation as provided in Order V, Rule 17, Civil Procedure Code, should not be allowed till after the day fixed for scrutiny. Service by affixation not to be made before the date fixed for scrutiny of service.

(ii) As for service by post, Order V, Rule 10 proviso (as added by Punjab amendment) of the Code, provides that where the plaintiff so wishes, the Court may serve the summons in the first instance by registered post (acknowledgement due) instead of in the mode of service laid down in that rule. Order V, Rule 20(1) proviso (added by amendment) now enables the Court to direct the summons to be served by registered post after it has been returned unserved for any reason whatsoever.

(iii) The Service of Process to the other party can also be effected through electronic means where the party has furnished the requisite details.

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11. A perusal of the aforesaid High Court Rules and Order makes it crystal clear that at the first instance every attempt should be made to effect personal service and failing that service, on an agent or a member of the family. For the said purpose, the process-server should go again and again, if there is time before the date fixed for effecting/scrutiny of service. In other words service in any of the ways enumerated in Order V, Rules 12 to 16 of the Code of Civil



Procedure, should be insisted upon. The provisions of Order V, Rule 10 proviso (as added by Punjab amendment) of the Code shall be taken into effect where the plaintiff wishes that the Court may serve the summons in the first instance by registered post (acknowledgement due) instead of in the mode of service laid down in that Rule. Order V, Rule 20(1) proviso (added by amendment) also enables the Court to direct the summons to be served by registered post after it has been returned unserved for any reason whatsoever.

12. Therefore, the first attempt should be made to effect personal service and for that purpose efforts should be made again and again. Service of summons through registered post at the first instance can be made if the plaintiff wishes to do so, bypassing the other mode of service or at the instance of the Court after the summons are returned unserved for any reason whatsoever. It is not conspicuous from zimni orders dated 05.08.2017 and 29.09.2017 that the service was ordered to be effected through registered post (acknowledge due) on the wish of the respondent-decree holder nor any such reasons have been assigned in the aforesaid orders. Thus, in the opinion of this Court, at the first instance attempts ought to have been made to effect personal service upon the petitioner-judgment debtor and other modes of services as enumerated under Order V, Rules 12 to 16 CPC and not directly by way of registered post. Secondly, the presumption of deemed service through registered post in case RC not received back within a period of 30 days is always rebuttable and therefore, it would be in the interest of justice, if an opportunity is given to the petitioner to rebut the said presumption by way of leading evidence.

13. The judgment relied upon by learned counsel for the respondent in *M/s Malwa Strips Pvt. Ltd.* (supra) is not applicable to the facts of the present



case as in the said case, a summary suit under Order XXXVII CPC was filed and the principal amount was admitted by the respondent and his application for leave to defend was allowed, subject to the condition that he will make payment of undisputed and admitted amount, which he failed to do and the trial Court decreed the suit in favour of the appellant. In the appeal preferred by the respondent, the High Court stayed the operation and execution of the decree in its entirety and therefore, the Hon'ble Supreme Court held that stay of execution of decree cannot be granted if appellant did not deposit the decretal amount.

14. In view of the aforesaid facts and circumstances, the impugned order dated 19.08.2017 passed by the learned Judicial Magistrate 1st Class, Jalandhar is set aside and the revision petition is allowed. The learned Judicial Magistrate 1st Class is directed to decide the application under Order IX Rule 13 CPC as expeditiously as possible and preferably within a period of four months from the date of receipt of certified copy of this order. In the meantime, there shall be stay of the proceedings before the learned Executing Court i.e. the learned Judge, Commercial Court, Ahmedabad.

15. Miscellaneous application(s), if any, also stand disposed of.

(AMARINDER SINGH GREWAL)
JUDGE

September 24, 2025

Pankaj*

Whether speaking/reasoned : Yes
Whether reportable : Yes