

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****125****CR-4117-2025 (O&M)
Date of decision: 10.07.2025****Hawa Singh (since deceased) through his LRs****...Petitioner(s)****Vs.****Avinash Chander (since deceased) through his LRs****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ved Parkash, Advocate for the petitioner.

*********NIDHI GUPTA, J.**

Present Civil Revision Petition has been filed by the defendant under Article 227 of the Constitution of India, for setting aside the impugned order dated 23.05.2025 (Annexure P-9) in Civil Suit No.141 of 2019 dated 08.05.2019 (Annexure P-1) by which application under Order 9 Rule 13 of CPC for setting aside exparte order dated 30.10.2019 (Annexure P-4) as well as exparte judgment and decree dated 01.11.2021 (Annexure P-5) has been dismissed by the learned Additional Civil Judge (Senior Division) Safidon which is illegal, unjust and liable to be set aside.

2. It is *inter alia* submitted by learned counsel for the petitioner that application filed by the petitioner under Order 9 Rule 13 CPC (Annexure P-7) for setting aside the exparte order dated 30.10.2019 (Annexure P-4) as well as the exparte judgment and decree dated 01.11.2021 (Annexure P-5), has been wrongly dismissed by the learned



Additional Civil Judge (Senior Division) Safidon as the learned Court below has failed to appreciate that the original defendant had expired. It is submitted that therefore the petitioners who are the LR's of original defendant Hawa Singh were never aware of the pending litigation. The petitioners were in trauma and remained upset due to demise of their father Hawa Singh. On the other hand, the respondent/plaintiff/decreed-holder Avinash Chander was well aware about the serious illness and death of Hawa Singh; whereas the petitioners first came to know about the litigation pending against their father when they were summoned before the Executing Court. Whereupon the Petitioners immediately approached their counsel before the Civil Court at Safidon and were informed about the exparte judgment and decree dated 01.11.2021. Petitioners immediately filed an application under Order 9 Rule 13 CPC. However, without adverting to and without properly appreciating the above said facts, impugned order has been passed. Learned counsel submits that petitioners shall suffer irrevocable harm and loss in case impugned order dated 23.05.2025 (Annexure P-9) is not set aside. It is accordingly prayed that the present petition be allowed; and the impugned order dated 23.05.2025 (Annexure P-9) be set aside.

3. No other argument is raised on behalf of the petitioners.

4. I have heard learned counsel for the petitioners and perused the case file in great detail. I find no merit in the submissions made on behalf of the petitioners.



5. Brief facts of the case are that the respondent/plaintiff had filed a suit for recovery of Rs.11,90,000/- on dated 08.05.2019 (Annexure P-1) in which notice was issued to the original defendant Hawa Singh for 27.05.2019 vide zimni order dated 08.05.2019 (Annexure P-2). Vide Zimni order dated 27.05.2019 (Annexure P-3) following order was passed: –

“Service complete. Vakalatnama on behalf of defendant filed. The learned counsel for both the parties have stated that the parties have arrived at compromise, thereafter, defendant Hawa Singh has suffered a statement to the effect that he has compromised the present matter with the plaintiff through medium of panchayat as per the compromise he shall pay a total sum of Rs.7,00,000/- to the plaintiff. He further stated that he shall be liable to pay Rs.2,00,000/- till 15.7.2019, further sum of Rs.2,00,000/- till 15.9.2019 & remaining amount of Rs.3,00,000/- till 30.11.2019 and in case he fails to make payment of the aforesaid amount of Rs.7,00,000/- in the said three installments he shall be liable to pay the entire amount alongwith interest. The plaintiff has also suffered a statement acknowledging the said statement of defendant to be correct and stated that he has no objection in giving time to the defendant for making payment. Both the parties have been identified by their respective counsels. Heard. In view of the statement as given by defendant, the case is adjourned to 15.07.2019 for payment of first installment by defendant to the plaintiff as per his statement.”

6. However, when the matter was fixed for evidence of the defendant, he failed to put in appearance. Accordingly, defendant was proceeded against exparte vide order dated 30.10.2019 (Annexure P-4).



Eventually, suit for recovery was decreed in favour of the plaintiff vide ex parte judgment and decree dated 01.11.2021 (Annexure P-5).

7. It is the case of the petitioners that the original defendant Hawa Singh had expired and therefore the petitioners were unaware of the pending litigation between the plaintiff and the defendant and that they had discovered about the same only upon receiving summons from the Executing Court. However, I am not impressed by the said argument as it is admitted fact on record that the original defendant Hawa Singh had expired only on 22.01.2022 as evident from his death certificate (Annexure P-6). Therefore, at the time of passing of the ex-parte order dated 30.10.2019, and at the time of passing of impugned judgment, original defendant was very much alive.

8. At this stage, it has been submitted by learned counsel for the petitioners that Hawa Singh had remained mentally ill since 2004 and had been unable to walk since the year 2015. On a direct Court query, learned counsel for the petitioners has admitted that no medical evidence to this effect to prove the above said assertion of the defendants has been produced either before the Court below or before this Court. As such, there is not a smidgen of evidence to support the bald statement of the petitioners that Hawa Singh was mentally ill or physically incapacitated in any manner.

9. On the contrary, the self-serving and contradictory statement of the petitioners is belied from the fact that if Hawa Singh was mentally ill since 2004 then in what capacity had he suffered the statement as recorded



in order dated 27.05.2019 (Annexure P-3). Furthermore, record reveals that RW2 Abhishek Garg, Advocate for Hawa Singh had also stated before the learned Court below that he had tendered his Power of Attorney in the main case on the instructions of defendant Hawa Singh. RW2 had further identified thumb impression of Hawa Singh as well as his own signature on the said Power of attorney. He further stated that on 27.05.2019 Hawa Singh had appeared before the Court on his own and had suffered the statement as recorded above. As such, there is nothing on record to remotely imply that Hawa Singh was not of sound mind.

10. Hence, I find no ground is made out to interfere in the impugned order dated 23.05.2025 (Annexure P-9). The present Civil Revision Petition is hereby **dismissed**.

11. Pending application, if any, stands disposed of.

10.07.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No