CNR No: PHHC010400042026
2026:PHHC:180995

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CR No.2685 of 2026 (O&M)**

Smt. Surinder Kaur and another **... Petitioners (Defendant Nos.1 and 2)**

Versus

Smt. Jinder Pal Kaur and others ... Respondents (Plaintiffs)

(2) **CR No.5681 of 2026 (O&M)**

Rekha Singh and another **... Petitioners (Defendant Nos.3 and 4)**

Versus

Smt. Jinder Pal Kaur and others ... Respondents (Plaintiffs)

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Reserved on: 24.09.2026
Pronounced on: 28.09.2026
Pronounced fully/operative part: Fully

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Varun Baanth, Advocate and
Mr. Akash Soni, Advocate for the
petitioners in CR No.2685 of 2026.

Mr. S.S. Swaich, Advocate,
Ms. Deepika Advocate and
Ms. Ishani Goyal, Advocate for the
petitioners in CR No.5681 of 2026.

Mr. Divyanshu Jain, Advocate and
Mr. Varun Parkash, Advocate for
the respondents.

DEEPAK GUPTA, J.

These two petitions have arisen out of the same proceedings and are being disposed of by this common order. **CR No.2685 of 2026** has been filed by defendant Nos.1 and 2, whereas **CR No.5681 of 2026** has been filed by defendant Nos.3 and 4.

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2. The perusal of the record would reveal that a suit for a decree of mandatory injunction for vacation of a 6 marla portion of House No.1268, Sector 8-C, Chandigarh, and recovery of use and occupation charges was filed by plaintiffs Smt. Jinder Pal Kaur and others *(respondents herein)* against four defendants on 24.03.2019.

3. Defendant Nos.1 and 2 were proceeded against ex parte vide order dated 17.01.2020. An application for setting aside the ex parte proceedings was moved on 03.10.2022 by defendant N: 1 only, which was dismissed by the trial Court vide order dated 01.04.2023. That order has been assailed by defendant Nos.1 and 2 in the first revision.

4. Defendant N: 1 & 2 filed **CR N: 2685 of 2026** to set aside the order dated 01.04.2023 of the Trial court. It is very important to notice that the said revision has been filed on 20.03.2026, i.e. almost three years after the passing of the impugned order.

5. Defendant Nos.3 and 4 had been proceeded against ex parte on 26.08.2019. They moved an application for setting aside the ex parte order on 31.05.2023, which was allowed by the trial Court on 14.05.2024. The plaintiffs filed *CR No.3884 of 2024* challenging that order. This Court, vide order dated 31.07.2024, set aside the order and remanded the matter to the trial Court for passing a fresh reasoned order after hearing the parties and considering their respective pleas. The trial Court passed a fresh order dated 18.07.2025 and again allowed the application of defendants N: 3 & 4 by setting aside the order dated 26.08.2019. The plaintiffs again filed *CR No.5960 of 2025*, and vide order dated 30.04.2026, this court again remanded the matter with the direction to decide the application strictly in terms of the directions contained in the earlier order dated 31.07.2024, after affording adequate opportunity of hearing to both the parties. Thereafter, the trial Court, by way of impugned order dated 06.07.2026, dismissed the application of defendant Nos.3 and 4 for setting aside the order dated 26.08.2019. Against this order, defendant Nos.3 and 4 have filed the second revision, i.e. **CR No.5681 of 2026**.

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6. Before proceeding further, it may be noted that the application for setting aside the ex parte proceedings ***(subject matter of CR No.2685 of 2026),*** was not moved by defendant No.2 before the trial court, as the said application *(Annexure P-10)* was moved only by defendant No.1. It was pleaded therein that the applicant-defendant was an old, infirm and sick widow and, due to her advanced age, she was suffering from various ailments. For this reason, she was staying with her daughter at Gurugram and was not allowed to move out of the house during the Covid period. Her only son was also suffering from various ailments and had to spend considerable time in hospital, and it is because of these reasons that she could neither contact her counsel nor enquire about the date of hearing. It was pleaded that it was only in the preceding week, when she came back to Chandigarh from her daughter's house, that she came to know that she had been proceeded against ex parte.

7. In the application dated 31.05.2023 ***(Annexure P-3 in CR No.5681 of 2026),*** defendant Nos.3 and 4 pleaded that they came to know about the ex parte proceedings of 2019 only on 18.05.2023 through a family friend. They tried to contact defendant Nos.1 and 2 to enquire, whether any summons had been served upon them, but they were not available. They then tried to contact their counsel, but could not do so as he was out of India. It was also pleaded that they had no knowledge of the proceedings as, during the intervening period, they were in Madhya Pradesh.

8. Ld. Counsels appearing for petitioners in both the cases submit that valuable rights of petitioners – defendants in immovable property are involved and so, trial court was not justified in dismissing the applications for setting sides the ex-parte proceedings. Learned counsel for the petitioners – defendants N: 3 & 4 has additionally argued that service by Munadi cannot be considered effective service and, therefore, the trial Court was not justified in dismissing the application to set aside the ex-parte proceedings, particularly when on two previous occasions, the application had been allowed. Reliance has been placed upon ***Saroj v. Rajender Kumar, 2013(3) Law Herald 2518***, wherein it was observed that service of summons through Munadi is an old

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and obsolete methodology, which is seldom actually conducted and is being followed as a rule of convenience.

9. On the other hand, learned counsel for the respondents-plaintiffs has strongly opposed both the petitions and defended the impugned orders. By placing on record a list of dates and events, he has emphasised, as to how all the defendants have been acting in concert with each other to continue their unauthorised possession of the suit property. It is pointed out that defendant Nos.3 and 4 were proceeded against ex parte on 26.08.2019 and made no attempt to have that order set aside, because at that time defendant Nos.1 and 2 were appearing through counsel. Defendant Nos.1 and 2 were proceeded against ex parte on 17.01.2020. It is contended that only after the application of defendant No.1 was dismissed on 01.04.2023, the plaintiffs' evidence was closed on 28.04.2023; and as per plaintiffs, arguments were heard on 17.05.2023 and the case was fixed for orders, that defendant Nos.3 and 4 moved their application on 31.05.2023. While that application was being contested before the trial Court and this Court, defendant Nos.1 and 2 took no steps. They filed CR No.2685 of 2026 on 20.03.2026, challenging an order of 2023, only when the order in favour of defendant Nos.3 and 4 stood challenged in CR No.5960 of 2025. Learned counsel submits that in the earlier civil litigation between the predecessors-in-interest of the vendor and the present defendants, all four defendants were represented through the same counsel and filed a joint written statement, which shows that they are acting in collusion to prolong the litigation.

10. It is urged that in the above circumstances, trial court was justified in dismissing the applications. Reliance has been placed upon:

- *Bhanu Kumar Jain v. Archana Kumar and anr., 2005 AIR SC 626;*
- *Arjun Singh v. Mohindra Kumar and ors., 1964 AIR SC 993;*
- *Rasiklal Manickchand Dhariwal and anr. v. M/s M.S.S. Food Products, (2012) 2 SCC 196;*
- *Gulshan Kumar v. Mahender Singh Samriwal and ors., 2025(4) Law Herald 3538;*

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◦ *Sonia Garg and anr. v. Sarita Gupta and anr., 2022(3) RCR (Civil) 31; and*

◦ *Sushila Devi v. Randhir Singh, 2019(1) PLR 65.*

11. This Court has considered the submissions of both sides and has perused the record carefully.

Scope of interference

12. Both impugned orders have been passed on applications under Order 9 Rule 7 CPC. They are interlocutory in nature. Even if they had been decided in favour of the applicants, the suit would not have been finally disposed of. By virtue of the proviso to Section 115 CPC, as amended by Act No.46 of 1999, a revision under Section 115 does not lie against such orders. The petitions, therefore, have to be examined in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

13. The contours of this jurisdiction are well settled. In ***Shalini Shyam Shetty and anr. v. Rajendra Shankar Patil, (2010) 8 SCC 329***, the Hon'ble Supreme Court held that the power under Article 227 is to be exercised sparingly, only to keep subordinate courts within the bounds of their authority, and not to correct mere errors of fact or of law. The High Court does not sit in appeal. It does not substitute its own view for a plausible view taken by the court below, nor does it reappreciate evidence. Interference is warranted only where the order suffers from a patent lack of jurisdiction, a flagrant disregard of law, or perversity resulting in grave injustice. These principles were reiterated in ***Radhey Shyam and anr. v. Chhabi Nath and ors., (2015) 5 SCC 423,*** and ***M/s Garment Craft v. Prakash Chand Goel, (2022) 4 SCC 181.***

14. Further, Article 227 jurisdiction is discretionary. A party invoking it must approach the Court within a reasonable time and with a clean record of conduct. Though no period of limitation is prescribed for such a petition, the period of ninety days provided for a civil revision under Article 131 of the Schedule to the Limitation Act, 1963 furnishes a reasonable yardstick. A petitioner, who approaches this Court well beyond that period must satisfactorily explain the delay.

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The governing principles

15. Order 9 Rule 7 CPC provides that where the Court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as to costs or otherwise as the Court directs, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

16. Two conditions are thus built into the provision. The first relates to the stage - the defendant must appear at or before the adjourned hearing. The second relates to the cause - he must show good cause for his previous non-appearance. The relief is discretionary, and the discretion is to be exercised judicially on the facts pleaded and proved.

17. In ***Arjun Singh v. Mohindra Kumar (supra),*** the Hon'ble Supreme Court explained that Order 9 Rule 7 operates only while the hearing of the suit stands adjourned. Once the hearing has concluded and the case is reserved for judgment, there is no adjourned hearing at or before which the defendant can appear under this Rule. The Court also held that the principle of finality applies to the successive stages of the same proceeding, so that a party cannot reagitate at a later stage what has been decided against him at an earlier one. In ***Rasiklal Manickchand Dhariwal v. M/s M.S.S. Food Products (supra)***, the Hon'ble Supreme Court reproduced and applied these observations. It noted that a defendant who fails to show good cause is not barred from taking part in whatever remains of the trial, but he cannot claim to be put back in the position he occupied at the commencement of the trial. It further noted that Order 9 Rules 7 and 13 between them cover every situation that may arise from a defendant's non-appearance.

18. In ***Bhanu Kumar Jain v. Archana Kumar (supra),*** the Hon'ble Supreme Court held that a defendant proceeded against ex parte is not shut out altogether. He may join the proceedings at the stage, at which he appears. He cannot, however, be relegated to the position he would have occupied, had

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the ex parte order not been passed. He may cross-examine the plaintiff's witnesses yet to be examined and address arguments on the basis of the material on record, but he cannot set up a defence by leading his own evidence. The Court further recognised that the remedies available after an ex parte decree remain open to him in accordance with law.

19. As regards service, Order 5 Rule 20 CPC empowers the Court, where it is satisfied that the defendant is keeping out of the way to avoid service or that for any other reason the summons cannot be served in the ordinary way, to order substituted service. Sub-rule (2) declares that substituted service so ordered is as effectual as personal service. Service by Munadi is one of the modes adopted under this provision.

20. Whether a defendant was duly served and whether he had knowledge of the proceedings are questions of fact to be determined from the record of each case. Where the defendant had notice of the proceedings, a mere irregularity in the mode of service does not by itself entitle him to have the ex parte proceedings undone.

21. Still further, the delay in seeking relief is a relevant factor in its own right. A defendant who has knowledge of the suit and chooses to stay away cannot wait for the plaintiff to complete his evidence and then seek to reopen the trial. Such an application must be moved with reasonable promptitude, and the explanation for any delay must be specific, bona fide and supported by the record.

CR No.2685 of 2026 (defendant Nos.1 and 2)

22. *Petition by defendant No.2* -The application under Order 9 Rule 7 CPC was moved by defendant No.1 alone. Defendant No.2 never sought setting aside of the ex parte order dated 17.01.2020 before the trial Court. The order dated 01.04.2023 adjudicates no plea of his and he cannot claim to be aggrieved by it. He cannot, by joining a revision, obtain relief that he never asked for from the trial Court. The petition, insofar as it is filed by defendant No.2, is not maintainable.

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23. *Delay in approaching this Court* - The impugned order was passed on 01.04.2023. The revision was filed on 20.03.2026, after about two years and eleven months. No satisfactory explanation for this delay is forthcoming. The timing is significant. Throughout this period, the application of defendant Nos.3 and 4 was being pursued and was twice allowed by the trial Court. Defendant Nos.1 and 2 chose to approach this Court only after that application had once again come under challenge in CR No.5960 of 2025. This conduct lends support to the respondents' submission that the defendants have been pursuing their remedies one after another, rather than bona fide. The unexplained delay alone disentitles defendant Nos.1 and 2 to the discretionary relief under Article 227.

24. *Merits* - Even otherwise, the order dated 01.04.2023 does not call for interference. The record shows the following undisputed facts:

- defendant No.1 was served in person on 27.03.2019, and defendant No.2 was served through her on 27.03.2019 and again on 12.07.2019;
- an advocate appeared for defendant No.1 on 07.05.2019 and for both defendant Nos.1 and 2 on 19.07.2019;
- on 26.08.2019, 26.09.2019 and 18.11.2019, counsel appeared and sought time to file the written statement, but none was filed; and
- on 17.01.2020, neither the defendants nor their counsel appeared, and they were proceeded against ex parte.

25. The defendants were thus fully aware of the suit and were represented by the counsel. The ground set up in the application is the Covid-19 pandemic. The nationwide lockdown was imposed only from 25.03.2020, more than two months after the ex parte order dated 17.01.2020. The pandemic, therefore, cannot explain the non-appearance on that date. Nor does it explain the delay till 03.10.2022. Even the extension of limitation granted by the Hon'ble Supreme Court in In ***Re: Cognizance for Extension of Limitation (Suo Motu Writ Petition (Civil) No.3 of 2020)*** excluded the period only up to

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28.02.2022 and allowed ninety days thereafter. The application was moved months beyond even that outer period.

26. The plea that defendant No.1 learnt of the ex parte order only in the week preceding the application cannot be accepted. She had engaged counsel, and the very same counsel who had been appearing for her in 2019 filed the application in 2022. No reason at all is assigned for his absence on 17.01.2020. No medical record was placed before the trial Court to substantiate the ailments of defendant No.1 or her son, or her stay at Gurugram. As the trial Court rightly noted, the case proceedings were being uploaded and were accessible to the defendants throughout.

27. Learned counsel for the petitioners has annexed certain documents with the revision petition which, admittedly, were not placed before the trial Court. The legality of the impugned order has to be tested on the material before the trial Court. Documents produced for the first time in supervisory jurisdiction cannot be relied upon to find fault with the order.

28. The trial Court has recorded cogent reasons to the effect that the defendant was represented through counsel, no reason was given for counsel's absence, the application was moved after more than two and a half years, and no document supported the pleaded cause. This view is not only plausible but the correct one on the record. It suffers from no illegality, perversity or jurisdictional error warranting interference under Article 227.

CR No.5681 of 2026 (defendant Nos.3 and 4)

29. *Stage* at which the application was moved, is important to notice. The plaintiffs' evidence was closed on 28.04.2023 and the case was fixed for arguments. The respondents contend that arguments were concluded on 17.05.2023 and that the case was thereafter adjourned for orders to 24.05.2023 and 26.05.2023. The trial Court record, however, shows that on each of these dates, the case was fixed only for arguments. The hearing had therefore not concluded when the application was moved on 31.05.2023. The principle laid down in ***Arjun Singh (supra)*** and reiterated in ***Rasiklal (supra)*** that Order 9 Rule 7 has no application once the hearing has concluded and the

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suit is closed for judgment, is not attracted on these facts. The objection to maintainability of the application, cannot be sustained as such.

30. The stage at which the application was moved nonetheless remains relevant. It was moved only after the entire evidence of the plaintiffs had been recorded and closed, when the suit was ripe for final arguments. An invocation of Order 9 Rule 7 at the fag end of the trial calls for strict scrutiny of the cause shown, and it is on that touchstone that the application must be tested.

31. *Service by Munadi* - The contention that service by Munadi was ineffective has no merit on the facts of this case. The summons were sent to House No.1267, Sector 8-C, Chandigarh, which is the address of all four defendants. It is the same address, at which they were served, and at which they appeared and filed a joint written statement, in the earlier suit of 2010. The applicants do not dispute that it is their residence. Service was attempted on 28.03.2019, 04.04.2019, 09.04.2019, 19.04.2019, 23.04.2019, 04.05.2019, 08.07.2019, 11.07.2019, 14.07.2019 and 18.07.2019. It was only after these successive unsuccessful attempts that the trial Court, on 19.07.2019, ordered service by Munadi, which was effected on 29.07.2019. The report records that the defendants resided on the first floor and that no one came out. Substituted service was therefore ordered after the ordinary mode had been exhausted, which is precisely what Order 5 Rule 20 CPC contemplates. Sub-rule (2) makes such service as effectual as personal service.

32. The observations in ***Saroj v. Rajendra Kumar (supra***) were made in a context, where Munadi was resorted to as a mere rule of convenience, without genuine effort at personal service. Such is not the case here. That judgment does not lay down that service by Munadi is invalid in every case, and so, it does not assist the petitioners.

33. *Knowledge and good cause* - Even if the question of service is set aside, the real question under Order 9 Rule 7 CPC is whether the applicants have shown good cause for their non-appearance. The trial Court has found that knowledge of the proceedings can be attributed to them. That finding rests on firm ground:

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- the applicants are closely related to defendant Nos.1 and 2 and are co-owners of the adjoining House No.1267, Sector 8C, Chandigarh which is not disputed;

- defendant Nos.1 and 2 appeared in the present suit through counsel from May 2019 to November 2019; and

- in the earlier suit concerning the same property, all four defendants appeared through common counsel and filed a joint written statement.

34. Against this background, the plea that the applicants first learnt of the suit on 18.05.2023 from an unnamed family friend is wholly unconvincing. The friend is not named, and his connection with the suit is not disclosed. The application itself states that, on learning of the suit, the applicants tried to contact "their counsel", who was abroad. This pre-supposes a counsel already engaged by them, which sits uneasily with the claim of complete ignorance.

35. The plea of residence in Madhya Pradesh is equally vague. The application does not state when the applicants went there or how long they stayed. The Jamabandi of land at Village Bargi, District Jabalpur only shows ownership of land there. It says nothing about where the applicants were living in 2019. The pathology report dated 12.05.2021 relates to a date almost two years after the ex parte order. The trial Court rightly held that these documents do not establish the absence pleaded.

36. It may be noted that the impugned order of the trial court records that defendant Nos.1 and 2 had filed their written statement. That is not correct, as the record shows that no written statement was filed. The error, however, is immaterial. The trial Court's reasoning rests on the appearance of defendant Nos.1 and 2 through counsel, which is undisputed, and that appearance fully supports the inference drawn.

37. *Delay* - The application was moved on 31.05.2023, about three years and nine months after the ex parte order dated 26.08.2019. No specific explanation for this period is offered apart from the plea of lack of knowledge,

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which has been disbelieved. No prayer for condonation of delay was made either.

38. Much emphasis was laid on the fact that the application had twice been allowed. That submission overlooks that both orders dated 14.05.2024 and 18.07.2025 were set aside by this Court. Once set aside, they ceased to exist. The trial Court was bound to decide the application afresh in terms of the directions of this Court. The petitioners cannot draw any sustenance from orders that no longer survive.

39. It is thus found that the impugned order dated 06.07.2026 is a reasoned order. It has considered the pleas of the parties in light of the directions of this Court and has taken a view, which is fully borne out by the record. No ground for interference under Article 227 is made out.

Conclusion

40. Viewed together, the two petitions disclose a clear pattern. Defendant Nos.3 and 4 remained silent while defendant Nos.1 and 2 were contesting the suit. Defendant Nos.1 and 2 then stopped appearing. Defendant Nos.3 and 4 moved only after the plea of defendant No.1 had failed and the plaintiffs had closed their evidence. Defendant Nos.1 and 2 revived their challenge after nearly three years, when the relief obtained by defendant Nos.3 and 4 was under challenge. As a result, a suit instituted in March 2019, in which the plaintiffs' evidence was closed in April 2023, has remained at the stage of final arguments for over three years. The procedural provisions of the Code are meant to advance justice, not to allow parties with knowledge of the suit to stall it indefinitely.

41. For the reasons recorded above, both petitions are found to be devoid of merit. Therefore, both the revisions - **CR No.2685 of 2026** and **CR No.5681 of 2026** are hereby dismissed.

42. It is, however, clarified that, in terms of ***Bhanu Kumar Jain (supra),*** the petitioners shall be at liberty to join the proceedings at the stage at which they now stand, and may address arguments on the basis of the ma-

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terial on record, but without being relegated to the stage prior to the ex parte orders. All other remedies available to them in law after the final decision of the suit shall remain unaffected by this order.

43. Keeping in view that the suit is of the year 2019 and the plaintiffs' evidence stood closed on 28.04.2023, the trial Court is directed to proceed with the suit from the stage it has reached and to decide it as expeditiously as possible, preferably within three months from the date of receipt of a certified copy of this order. The parties shall not seek unnecessary adjournments.

44. Nothing stated herein shall be construed as an expression of opinion on the merits of the suit. No order as to costs.

45. Pending miscellaneous application(s), if any, also stand disposed of.

46. A photocopy of this order be placed on the file of the connected case.

(DEEPAK GUPTA)
JUDGE

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Whether Speaking/reasoned *Yes*
Whether reportable *No*

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