CNR No: PHHC011462772022

2026:PHHC:112653

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-6059-2022

Inder Singh
Through his Legal Representatives

.... Petitioner

Vs.

Food Corporation of India and others

.... Respondents

****

Reserved on:13.08.2026
Pronounced on:17.08.2026
Pronounced Fully/Operative Part: Fully

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr.Amit Jhanji, Sr. Advocate, with
Dr.Eliza Gupta, Advocate, for the petitioner.

Mr.K.K. Gupta, Advocate, for respondent No.1.

ORDER:

The present revision petition has been filed by defendant No.4, Inder Singh, challenging the order dated 13.09.2022 *(Annexure P-1)* passed by the learned Additional District Judge, Sangrur, dismissing the appeal against order dated 26.11.2015 *(Annexure P-2)*, whereby his application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 bearing CMA – 7758 of 2013 titled '*Inder Singh vs Food Corporation of India and others'* seeking setting aside of the ex parte judgment and decree dated 12.06.1996 *(Annexure P-3)* has been dismissed.

2. The facts giving rise to the present revision are that FCI had instituted a suit against Raghbir Singh and Company, a partnership firm, as well as certain persons described as its partners, including the petitioner. The suit ultimately culminated in an ex parte judgment and decree dated 12.06.1996. The petitioner subsequently approached the Court seeking setting aside of the said decree,

contending that he had never been served with summons in the original suit and that the description of defendant No.4 in the suit was also incorrect, inasmuch as his father's name was wrongly mentioned and his address was also not his correct address. Trial court as well as appellate court dismissed his application.

3. The appellate Court has noticed the petitioner's case that he is Inder Singh son of Maha/Mahan Singh, whereas the person described in the suit was Inder Singh son of Makhan Singh, resident of Dhuri.

4. The petitioner's specific grievance is that there is no material on the record of the original suit establishing that summons were ever personally served upon him. He asserts that he had no knowledge of the pendency of the suit and came to know about the proceedings only subsequently, when proceedings were initiated against him in execution. According to him, he approached the Court without undue delay from the date of such knowledge.

5. The stand of FCI, on the other hand, is that the petitioner was a partner of Raghbir Singh and Company; the firm itself was a defendant in the suit; the firm was represented through its partners, including Prem Singh; and an application had also earlier been moved on behalf of the firm challenging the ex parte decree. It is, therefore, contended that the petitioner cannot be allowed to plead want of knowledge of the proceedings. FCI also relies upon the principle that a partnership firm is merely a compact name for its partners and that the partners are jointly and severally liable for the acts of the firm.

6. The learned Courts below accepted the stand of FCI by relying upon the fact that the petitioner was a partner of the firm, that another application under Order IX Rule 13 CPC had earlier been filed on behalf of the firm, and that the petitioner was allegedly residing at Dhuri as well. The Courts below also treated the discrepancy in the father's name as a mere typographical mistake and held that the petitioner had been duly served, including through substituted service.

7. Assailing the impugned orders, learned senior counsel for the petitioner submits that the approach adopted by the Courts below is legally unsustainable. It is contended that service upon the partnership firm cannot be

equated with personal service upon an individual partner, who was separately impleaded as a defendant. It is further submitted that the original suit record does not contain any proof of personal service upon the petitioner and, therefore, the ex parte decree could not have been passed against him without affording him an opportunity of hearing.

8. Learned counsel appearing for FCI, on the contrary, submits that the petitioner was admittedly a partner of the firm and cannot now take advantage of the difference in the father's name. It is argued that service upon one partner is sufficient service upon the firm under Order XXX Rule 3 CPC and that the firm had admittedly participated in the proceedings through one of its partners. Reliance has also been placed upon ***Ashutosh v. State of Rajasthan and others, 2005 (7) SCC 308.***

9. I have considered the submissions advanced by learned counsel for the parties and have carefully examined the record.

10. The first and foremost question which arises for consideration is whether the petitioner, who was separately arrayed as defendant No.4, was duly served with summons in the original suit.

11. On examination of the record, the answer has to be in the negative. There is no material on the record evidencing personal service of summons upon the petitioner, Inder Singh. There is neither any service report establishing that summons was personally served upon him nor any material indicating that he appeared before the trial Court in his individual capacity pursuant to such service.

12. The absence of such material assumes significance because the petitioner was not merely sought to be proceeded against in the name of the firm. He was separately impleaded as defendant No.4. The decree was thus capable of operating against him individually, and before an ex parte decree could be passed against him, he was entitled to due notice of the proceedings.

13. FCI seeks to overcome this deficiency by relying upon Order XXX Rule 3 CPC. There can be no dispute about the effect of the abovesaid provision. Where persons are sued as partners in the name of their firm, summons may be

served upon any one or more of the partners, and such service is deemed to be a good/valid service upon the firm so sued.

14. Order XXX Rule 3 CPC provides the manner in which service is to be effected, where persons are sued as partners in the name of their firm. It reads as under:

> ***'3. Service.—***Where persons are sued as partners in the name of their firm, the summons shall be served either—
>
> (a) upon any one or more of the partners, or
>
> (b) at the principal place at which the partnership business is carried on within India upon any person having, at the time of service, the control or management of the partnership business, there,
>
> as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without India:
>
> Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within India whom it is sought to make liable.'

10. Thus, the distinction between service upon a partnership firm and individual service upon a partner is well recognised. Service in the manner prescribed in above rule is expressly declared to be good service upon the firm so sued. However, the statutory language, is significant. The deeming fiction created by Rule 3 is expressly that the service shall be deemed good service "*upon the firm so sued*." The provision does not state that service upon one partner shall be deemed to be personal service upon every other partner.The provision cannot, therefore, be read as dispensing with individual service upon every partner, who is separately impleaded and against whom personal liability is sought to be fastened.

11. Thus, if a firm is sued in its firm name and summons are served upon one of its partners, such service undoubtedly constitutes a valid service upon the firm. The suit can consequently proceed against the firm without the necessity of serving every individual partner. But that is materially different from saying that a partner, who is separately impleaded as an individual defendant must be deemed to have been personally served merely because another partner was served on behalf of the firm.

12. The distinction is reinforced by Order XXI Rule 50 CPC, which reads as under :

> ***50. Execution of decree against firm.—(***1) Where a decree has been passed against a firm,execution may be granted—
>
> (a) against any property of the partnership;
>
> (b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX orwho has admitted on the pleadings that he is, or who has been adjudged to be, a partner;
>
> (c) against any person who has been individually served as a partner with a summons and hasfailed to appear:
>
> Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions ofsection 30 of the Indian Partnership Act, 1932 (9 of 1932).

13. Thus, under Rule 50(1)(c), where a decree has been passed against a firm, execution may be granted against a person who has been *"individually served as a partner with a summons and has failed to appear*." The expression "*individually served*" cannot be rendered meaningless. It reflects the legislative distinction between service upon the firm and individual service upon a partner.

14. The Hon'ble Supreme Court considered the interplay between Order XXX Rule 3 and Order XXI Rule 50 in ***Topanmal Chhotamal v. Kundomal Gangaram and others, 1959 SCC Online SC 22***. The Court noticed that a decree against a firm can be executed against partnership property and, subject to the conditions prescribed in Order XXI Rule 50, against the individual property of a partner. The statutory scheme specifically contemplates individual service upon a partner, who is sought to be proceeded against in that capacity.

15. Therefore, there is no difficulty in accepting the proposition that service upon one partner was sufficient service upon the firm Raghbir Singh and Company. The difficulty arises when that proposition is extended one step further and it is urged that such service necessarily amounted to personal service upon petitioner Inder Singh.

16. The two propositions cannot be equated. Service upon the firm and personal service upon an individual partner operate in different fields. The former

is governed by the deeming fiction contained in Order XXX Rule 3; the latter depends upon the requirements of the Code relating to service upon that individual defendant.

17. In the present case, the petitioner does not dispute merely the mode of service. His case is that he was never served at all. More importantly, the original suit record does not contain any evidence establishing such personal service. This is, therefore, not a case where there is a service report bearing an incorrect address but otherwise showing that the summons were tendered to the petitioner. It is a case where the very factum of personal service upon the petitioner remains unproved.

18. The discrepancy in the petitioner's father's name and address further reinforces the petitioner's plea. The original suit described defendant No.4 as Inder Singh son of Makhan Singh, resident of Dhuri, whereas the petitioner asserts that he is Inder Singh son of Maha/Mahan Singh and was residing at village Kheri Jattan. The appellate Court itself noticed the discrepancy but treated it as a typographical error.

19. It is true that an error in the father's name does not, in every case, invalidate service. If the identity of the person intended to be served is otherwise clearly established and the summons has actually reached him, a mere misdescription may not be fatal. But that principle cannot be invoked to presume service where the record contains no proof of personal service at all.

20. The fact that the petitioner was a partner of the firm may establish his substantive relationship with the firm. It may also have consequences regarding his liability for the acts of the firm. But his status as a partner cannot, by itself, establish the factual event of personal service upon him.

21. The Courts below also relied upon the testimony of Raghbir Singh, another partner, who stated that the petitioner was one of the partners of Raghbir Singh and Company. This evidence may be relevant to establish the petitioner's connection with the firm. It does not establish that summons in the original suit was personally served upon him or not.

22. Similarly, the fact that the firm had moved an application through one of its partners Prem Singh cannot, without more, be treated as a personal appearance by the petitioner. A partnership firm litigates in its firm name through its partners. An act done by one partner on behalf of the firm may bind the firm, but it cannot automatically be treated as an individual appearance, waiver or admission by every other partner.

23. Learned counsel for FCI has relied upon ***Ashutosh v. State of Rajasthan (Supra).*** There is no quarrel with the proposition emerging from the said judgment that a partnership firm is a compendious name for its partners and that, in the context of the substantive liability arising from acts of the firm, partners may be jointly and severally liable. The Supreme Court was dealing with the liability of partners for the firm's obligations and the consequences flowing from such liability.

24. The ratio of ***Ashutosh (supra)***, however, cannot be extended to hold that service upon a firm or upon one of its partners automatically constitutes personal service upon every other partner, who has been separately impleaded as a defendant. The question of substantive liability of a partner and the question of procedural service upon an individual defendant before an ex parte decree is passed against him are distinct questions.

25. In fact, the distinction is apparent from the statutory scheme itself. Order XXX Rule 3 facilitates service upon the firm through one or more partners. Order XXI Rule 50, on the other hand, specifies the circumstances in which a decree against the firm may be executed against an individual partner. One of those circumstances expressly contemplated by Rule 50(1)(c) is individual service upon the partner.

26. Thus, ***Ashutosh (Supra)*** does not come to the assistance of FCI on the precise issue arising in the present case. The proposition that the firm is a compendious name for its partners cannot be converted into a proposition that every procedural act done on behalf of the firm is deemed to have been personally done by every partner, irrespective of whether that partner was served or participated in the proceedings.

27. The distinction is particularly important here because the petitioner was himself arrayed as a separate defendant and the decree was passed ex parte against him. The original record does not reveal that he was personally served. The Court cannot supply that missing procedural step merely by drawing an inference from his status as a partner.

28. The fact that another partner, namely Prem Singh, represented the firm and that an application was moved on behalf of the firm may establish that the firm had knowledge of the litigation. It cannot, without further evidence, establish that the petitioner himself had knowledge of the suit or that he had waived his right to be served.

29. The appellate Court has also placed reliance upon the earlier application under Order IX Rule 13 CPC filed by the firm/other partners and its dismissal. This circumstance may have relevance while considering the knowledge of the persons who actually instituted that application. It cannot, however, be treated as a conclusive proof that the present petitioner had personal knowledge of the suit, particularly when he himself was not shown to have personally participated in those proceedings.

30. It is equally important to bear in mind that the present case is not one where the petitioner, after having appeared in the suit in his individual capacity, seeks to take advantage of some irregularity in the subsequent proceedings. The admitted position emerging from the original record is that there is no proof either of his personal service or of his individual appearance.

31. The right to notice before an ex parte adjudication is not a mere technical formality. Order IX Rule 13 CPC specifically provides a remedy to a defendant against whom an ex parte decree has been passed, where summons were not duly served. The provision is intended to ensure that a person is not deprived of an opportunity to contest a suit without having been brought before the Court in accordance with law.

32. The question of limitation has also to be examined in this background. Article 123 of the Limitation Act, 1963 prescribes thirty days for an application to set aside an ex parte decree, the period running from the date of

the decree or, where summons or notice was not duly served, from the date of knowledge of the decree.

33. The petitioner has asserted that he acquired knowledge of the proceedings only subsequently and thereafter approached the Court. The Court below rejected his plea essentially by attributing knowledge to him on the basis of the firm's proceedings and his status as a partner. Once it is found that there was no personal service upon him, mere knowledge of the firm cannot, in the absence of evidence of his own knowledge, be treated as conclusive of the date of knowledge attributable to the petitioner.

34. The position may have been different had the record established that the petitioner himself had appeared in the proceedings, had signed pleadings, had authorised the proceedings, had admitted the suit or had otherwise participated in the litigation in his individual capacity. No such material has been brought to the notice of this Court.

35. The Court is conscious that the petitioner has been associated with the firm and that the decree-holder may have substantive remedies against the firm and, subject to the requirements of law, against its partners. Nothing contained in this order shall be understood as adjudicating upon the ultimate liability of the petitioner for the dues of the firm.

36. The limited question before this Court is whether an ex parte decree can be sustained against the petitioner in his individual capacity as partner of the firm, when he was separately impleaded as a defendant and there is no proof that he was personally served with summons in the original suit.

37. For the reasons recorded above, the answer has to be in the negative.

38. The learned Court below, therefore, erred in treating service upon the firm and the participation of another partner on behalf of the firm as sufficient to establish personal service upon the petitioner. The impugned order, to that extent, suffers from an error of law as well as an erroneous appreciation of the material on record.

39. Consequently, the present revision petition is allowed. The impugned orders passed by the learned Courts below are set aside.The application filed by the petitioner under Order IX Rule 13 CPC is allowed. The ex parte judgment and decree dated 12.06.1996 are set aside qua the petitioner-Inder Singh.

40. The petitioner shall be afforded an opportunity to contest the suit in accordance with law. The trial Court shall proceed with the suit from the stage at which the petitioner ought to have been heard, after permitting him to file his written statement, if otherwise permissible in law, and to participate in the proceedings in accordance with the applicable provisions of the Code.

41. It is clarified that this order shall not affect the decree insofar as it operates against the firm or against such other defendants against whom the decree has attained finality. The rights of FCI to proceed against the firm or any partner in accordance with Order XXI Rule 50 CPC and other applicable provisions of law are also left open.

42. Since the original litigation dates back to the year 1996, the learned trial Court shall make every endeavour to dispose of the suit, insofar as it concerns the petitioner, expeditiously and preferably within a period of six months from the date of receipt of a certified copy of this order, subject to cooperation by the parties.

43. Pending miscellaneous application(s), if any, shall stand disposed of.

(DEEPAK GUPTA)
JUDGE

17.08.2026
Vivek

Whether Speaking/reasoned *Yes*
Whether reportable *Yes*

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