

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज Revision/TA/6664/2006/Jaipur Veer Singh Vs Umrao	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
	<p style="text-align: center;"><u>S.B.</u></p> <p style="text-align: center;">Shri Rajinder Kumar, Member</p> <p><u>Argued by:-</u> Shri Atmaram, Counsel for the Revisionists. Shri Hemant Sogani and Shri Khurshid Anwar, Counsels for the Respondents.</p> <p style="text-align: center;">*****</p> <p style="text-align: center;">J U D G M E N T Dated: 01-02-2019</p> <ol style="list-style-type: none">1. This revision petition has been preferred against the order dated 7.08.2006 of the trial court of Sub-Divisional Officer Kotputli, whereby the application filed by the defendants/respondents under Order 9 Rule 13 CPC was accepted setting aside the <i>ex parte</i> judgment and decree dated 22.11.2002 passed in suit no. 197/2002.2. Facts of the case are that the revisionists/plaintiffs filed two suits in the trial court seeking the reliefs of declaration and permanent injunction. The defendants/respondents appeared in the trial court and sought opportunities for filing the written statement. On 26.09.2002, none appeared on their behalf, therefore, <i>ex parte</i> proceedings were ordered against them. After recording the plaintiffs' evidence, the suits filed by them were decreed by the trial court vide judgment dated 22.11.2002. Thereafter, the defendants/respondents submitted applications under Order 9 Rule 13 CPC for setting aside the <i>ex parte</i> judgments and decrees. The said applications were accepted by the trial court by imposing costs of Rs. 1000/- on each of the application. Hence this revision.3. I have heard the learned counsels.4. On behalf of the revisionists/plaintiffs, it was argued that the defendants/respondents were grossly negligent in defending the suits and after seeking a number of	

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	<p>opportunities, they did not submit written statements to the plaintiffs. Thus, the trial court passed <i>ex parte</i> judgments against them after recording the evidence of the plaintiffs. The defendants/respondents did not show any sufficient cause for their non-appearance on 26.09.2002 and thus, the learned trial court illegally accepted the applications under Order 9 Rule 13 CPC. The learned trial court also did not appreciate the fact that during the pendency of the applications under Order 9 Rule 13 CPC, two plaintiffs, namely, Mohar Singh and Sohan had expired and without taking their LRs on record, the applications were decided in an illegal manner. Therefore, a prayer was made to accept the revision petition and dismiss the applications filed by the defendants/respondents under Order 9 Rule 13 CPC.</p> <p>5. Learned counsel for the contesting defendants/respondents vehemently opposed the above submissions. He argued that the posting date was wrongly noted by counsel for the defendants/respondents and this led to the passing of <i>ex parte</i> orders and ultimately <i>ex parte</i> judgments and decrees against them. As soon as they came to know of the passing of the said <i>ex parte</i> orders/judgments/decrees, they immediately filed applications for setting aside the same. The learned trial court has, in its discretion, rightly accepted the application for setting aside the <i>ex parte</i> judgments and decrees and the applications for delay condonation. Therefore, a prayer was made to dismiss the revision petition.</p> <p>6. I have given my thoughtful consideration to the rival submissions and perused the record carefully.</p> <p>7. The record reveals that the plaintiffs/revisionists had filed only one revision petition whereas two applications under Order 9 Rule 13 CPC were decided by the trial court and</p>	

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	<p><i>exparte</i> judgments and decrees passed in two separate suits were set aside by a common order. Therefore, it is not transpired which of the two orders the revisionists/plaintiffs intend to challenge by way of filing this revision petition. In my considered opinion, the plaintiffs/revisionists ought to have filed two separate revisions against the impugned order, if they really felt aggrieved by the same. Having failed to do so, one revision petition at their instance was not maintainable. In this regard, reliance can be placed on Premier Tier Ltd Vs Kerala State Road Transport Corporation (AIR 1993 SC 1202), Girija & or Vs Rajan & ors (RSA no. 14 of 2015 decided on 28.01.2015) and Lonakutty Vs Thomman (AIR 1976 S.C. 1645). It was held in these cases that if two separate matters are decided by a common judgment, separate appeals should be filed by the aggrieved party.</p> <p>8. On merits also, the learned trial court has not committed any illegality in passing the impugned order. The trial court felt 'satisfied' by the 'cause' shown by the defendants/respondents for their non-appearance on 26.09.2002 and on subsequent dates till the passing of the <i>exparte</i> judgments and decrees. A party should not suffer due to mistake of his counsel and thus, the discretion exercised by the trial court cannot be said to be arbitrary or perverse. The defendants/respondents were not going to gain anything by getting the <i>exparte</i> judgments and decrees passed against them. There is no material to show any malafide of the defendants/respondents in this regard. The delay in filing the application under Order 9 Rule 13 CPC was neither inordinate nor intentional. It is in the larger interest of justice that the matters should be decided on merits and not on hyper-technicalities.</p> <p>9. Keeping in view all the relevant facts and circumstances, there is no scope for interference in the impugned order.</p>	

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	<p>10.As regards, the death of the plaintiffs Mohar Singh and Sohan during the pendency of applications, the plaintiffs ought to have submitted applications for bringing them on record and thus, they cannot take the advantage of their own wrong.</p> <p>11.Therefore, the revision is dismissed.</p> <p>Pronounced.</p> <p style="text-align: right;">(Rajinder Kumar) Member</p>	