



Serial No.19
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No.2 of 2025

Date of Order: 17.06.2025

Shri Ganesh Roy
S/o (L) Birendra Kr. Roy,
R/o Nakham Bazar, Tura,
West Garo Hills District,
Meghalaya.

Vs. 1. Smti Sukla Roy
W/o (L) Pejush K. Roy,
R/o Nakham Bazar, Tura,
West Garo Hills District,
Meghalaya.

2. Shri Prithish Roy
S/o (L) Pejush K. Roy,
R/o Nakham Bazar, Tura,
West Garo Hills District,
Meghalaya.

.....Petitioner.

.....Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Dey, Adv.

For the Respondent(s) : Mr. P. R. Paske, Adv. (R: 1 & 2).

**ORAL:-**

Heard Mr. S. Dey, learned Counsel for the petitioner and Mr. P. R. Paske, learned Counsel for the respondents.

1. By this revision petition, the petitioner has sought for quashing and setting aside of the impugned order dated 05-07-2022 passed in Misc. Case No. 9 of 2023 arising out of TS No. 6 of 2022 by the learned Assistant to Deputy Commissioner (J), Tura. A further prayer has been made for restoration of the TS No. 6 of 2022 back to file which was dismissed for default by the Trial Court.

2. The petitioner as plaintiff instituted TS No.6 of 2022 in the Court of Assistant to Deputy Commissioner (J), Tura against the respondents herein praying for declaration of right, title and ownership and for other reliefs over the suit land. During the pendency, the TS No.6 of 2022 was dismissed for default on 12-07-2023 because of non-appearance of the petitioner before the Trial Court. After the dismissal of the suit, the petitioner filed an application under Order IX Rule 9 read with Section 151 CPC on 10-08-2023 praying for restoration of the title suit. The application was registered as Misc. Case No. 9 of 2023. The learned Trial Court after hearing the parties rejected the said application for restoration by order dated 05-07-2024 as the Court was not satisfied with the reasons and explanations offered by the petitioner. Being aggrieved, the petitioner has preferred this revision petition before this Court.

3. Mr. S. Dey, learned Counsel for the petitioner submits that the learned Trial Court committed a gross error in law by not appreciating the explanations offered by the petitioner with regard to the reasons for his previous non-appearance before the Trial Court. He submits that a perusal of the contents of the application for restoration would show that the suit



was dismissed mainly on the ground of default of the lawyer appearing on behalf of the petitioner. He submits that it is a settled position of law that a party cannot be victimized or made to suffer for the fault of his lawyer. He, therefore, submits that the impugned order may be interfered with and a direction be issued for restoration of the TS No. 6 of 2022 back to file so that the same can proceed and decided on merits in accordance with law.

4. Mr. P. R. Paske, learned Counsel for the respondents, on the other hand, objects to the prayer made on behalf the petitioner and submits that there were numerous occasions on which the petitioner defaulted in appearance before the Trial Court. By referring to the observations made by the learned Trial Court in the impugned order dated 05-07-2024, the learned Counsel submits that the petitioner failed to proceed with the suit diligently in spite of the several opportunities granted to the petitioner. He, thus, submits that the order of the Trial Court cannot be faulted with and prays for dismissal of the revision petition.

5. Upon hearing the learned Counsel for the parties and on perusal of the materials on record, it transpires that the TS No.6 of 2022 was dismissed on 12-07-2023. After the dismissal of the TS No.6 of 2022, the petitioner filed an application for restoration of the suit on 10-08-2023 within the time stipulated by law. There was no delay on the part of the petitioner to apply for restoration of the suit. Further, it appears from the observation made by the Trial Court in the impugned order dated 05-07-2024 that the reasons for default in appearance of the petitioner were mainly due to the fault of his lawyer. None of the observations made therein are with regard to the personal conduct of the petitioner. Thus, it would not be proper to make the petitioner suffer for the fault of his lawyer. The fact that the petitioner approached the Trial Court with the application



for restoration of the suit within the time stipulated by law is an indication of the fact that the petitioner is desirous to proceed with the suit.

6. In the above circumstances, it is deemed appropriate to interfere with the impugned order dated 05-07-2024 passed in Misc. Case No.9 of 2023 by the learned Assistant to Deputy Commissioner (J), Tura and the same is hereby set aside. Resultantly, the TS No.6 of 2022 stands restored back to file. The parties are directed to appear before the Trail Court on 28-07-2025.

7. With the above, this revision petition stands allowed.

Judge

Meghalaya
17.06.2025
"Biswarup PS"