

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRP(CRP.Art.227) No.29 of 2024

1. Thokchom Ongbi Nungshi Devi, aged about 70 years W/O (L) Th. Ibopishak Singh, a resident of Singjamei Thongam Leikai, P.O. & P.S. Singjamei, District Imphal West, Manipur
2. Thokchom Ongbi Memma Devi, aged about 70 years W/O (L) Th. Nabachandra Singh, a resident of Singjamei Thongam Leikai, P.O. & P.S. Singjamei, District Imphal West, Manipur.

.....Petitioners

Versus

Thokchom Ningol Ibempishak Devi D/o Late. Th. Mani Singh, a resident of Singjamei Thongam Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur at present deceased and represented by her LRs, namely

- i) Moirangthem Dhamendra Singh, aged about 53 yrs. S/o Late, M. Debendra Singh and Ibempishak Devi, at present residing at Singjamei Thongam Leikai, P.O. & P.S. Singjamei under Imphal West District of Manipur.
- ii) Moirangthem Jitendra Singh, aged about 48 years S/o Late, M. Debendra Singh and Ibempishak Devi, at present residing at

Singjamei Thongam Leikai, P.O. & P.S. Singjamei under Imphal West District of Manipur.

- iii) Moirangthem Ningol Shanti Devi, aged about 51 yrs. D/o Late, M. Debendra Singh and Ibempishak Devi W/o Ningthoujam Manisana Singh, at present residing at Langjing Achouba Purkhri Mapal, P.O. Langjing & P.S. Patsoi under Imphal West District of Manipur.
- iv) Sanasam Kananbala Devi, aged about 62 yrs. D/o Late, S. Biramangol Singh and Ibempishak Devi W/o Late, Sanasam Jotin @ Bibi Singh, at present residing at Singjamei Sanasam Leikai, P.O. & P.S. Singjamei under Imphal West District Manipur.

.....Respondents

BEFORE

HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR

For revision petitioners	Mr. L. Okendro Singh, Advocate along with Ms. Merina Thokchom, Advocate.
For respondents	Mr. L.N. Ngamba, Advocate along with Mr. A. Phulchand Sharma, Advocate.
Date of Judgment & Order	15.06.2026

JUDGEMENT & ORDER
(Oral)

[1] The following abbreviations/short forms have been used in this order (for the sake of brevity, convenience and clarity):

Sl. No.	Abbreviation/Short Form/other short references	Full Form/Expansion
1.	CRP	Civil Revision Petition
2	said Trial Court	Court of Civil Judge (Senior Division), Imphal West, Manipur
3.	CoD	Condonation of Delay
4.	impugned order	Order dated 05.12.2023 made by said Trial Court in Judl. Misc. Case No. 571 of 2022 (Ref: Original Suit No. 84 of 2015)
5.	Judl. M.C.	Judicial Miscellaneous Case
6.	O.S.	Original Suit
7.	D1	first defendant (similar abbreviation/s are used for other defendants also with a numeric change alone, 'second defendant' is referred to as 'D2', 'third defendant' is referred to as 'D3' so on and so forth)
8.	LR	Legal Representative
9.	LRs	Legal Representatives
10.	said suit	O.S. No. 84 of 2015
11.	CPC	Code of Civil Procedure, 1908
12.	Limitation Act	The Limitation Act, 1963 (36 of 1963)

[2] Captioned CRP has been presented in this Court on 12.08.2024 assailing the impugned order.

[3] Judl. M.C. No. 571 of 2022 was filed in said Trial Court by wife of deceased D1 & D2 under Section 5 of Limitation Act read with Section 151 of CPC with a CoD prayer *qua* 523(five hundred twenty three) days delay in filing an application to set aside an ex-parte decree dated 25.02.2019 made in said suit (O.S. No. 84 of 2015). This CoD application was dismissed in and *vide* impugned order made by said Trial Court. Aggrieved, 'wife of D1 as LR and D2' ('collectively revision petitioners' for the sake of convenience) have presented the captioned CRP in this Court. Owing to the limited legal perimeter of captioned CRP, it will suffice to write that O.S. No. 84 of 2015 (said suit) was filed in said Trial Court by one Mrs. Thokchom Ningol Ibempishak Devi as lone plaintiff *inter alia* with prayers to declare proceedings in a mutation case as null and void, for a decree declaring that plaintiff is absolute owner of suit properties and injunction. To be noted, lone plaintiff is no more and her 4(four) legal heirs have stepped into her shoes and they are respondents before this Court.

[4] In the hearing today, Mr. L. Okendro Singh along with Ms. Merina Thokchom, learned counsel on record for revision petitioners and Mr. L.N. Ngamba, learned counsel along with Mr. A. Phulchand Sharma, learned counsel on record for respondents are before this Court.

[5] Main CRP was taken up with the consent of both sides and learned counsel on both sides were heard out in full.

[6] The afore-referred said suit when filed in said Trial Court had 8(eight) defendants in all. As regards D1, he died pending suit, LR was brought on record and as already alluded to supra, wife of D1 is revision petitioner No.1 in captioned CRP.

[7] Suffice to write that said suit is a legal tussle primarily between half siblings for the estate of one Mr. Thokchom Mani Singh who had two wives viz., Th. (O) Ruhini Devi and Th.(O) Ibeton Devi. It is not necessary to dilate further on facts as captioned CRP arises out of an order in a CoD application. Post service of suit summons, D1 to D4 & D6 entered appearance through counsel and filed a common/joint written statement dated 16.02.2016. Thereafter, the counsel for these defendants had filed a determination application on 18.08.2018 (Judl. M.C. No.565 of 2018). This determination application dated 18.08.2018 was dismissed for default on 16.11.2018 without notice to D1 to D4 & D6. To be noted, there is nothing on record to demonstrate that notice in this determination application was served on D1 to D4 & D6. Ultimately, said suit was decreed ex-parte on 25.02.2019. Thereafter, the lone plaintiff filed a mutation case (Execution) on 17.02.2021 and D1 to D4 as well as D6 came to know about the ex-parte decree only on 26.08.2022 when the revenue officials, pursuant to mutation case, went over to the suit properties for demarcation. In the CoD application (Judl. M.C. No.571 2022), there is a specific averment about this in sub-paragraph (iv) of paragraph 3 and it has been averred that on the very next day i.e., 27.08.2022 D1 to D4 & D6 contacted their counsel but their counsel merely informed them about the filing of the determination application filed on 18.08.2018.

[8] To be noted, the plaintiff filed written objections dated 02.02.2023 in the CoD application and while responding to afore-referred sub-paragraph (iv) of paragraph 3, the plaintiff has merely denied the allegations and said no determination application has been filed on 18.08.2018.

[9] In the aforesaid backdrop, said Trial Court in and *vide* the impugned order has dismissed the CoD application without going into the question as to whether D1 to D4 & D6 were put on notice in the determination application and wandering into Covid period (across the Board) extension of limitation period. Aggrieved, wife of D1 (LR) and D2 are before this Court.

[10] This Court now embarks upon setting out discussions and dispositive reasons.

[11] As already alluded to supra, the legal perimeter of captioned CRP is very limited.

[12] This Article 227 Court deems it appropriate to first deal with the determination application point (first point). At the outset, the contention of the plaintiff that no determination application was filed on 18.08.2018 cannot be countenanced and this argument is a non-starter. The reason is, the impugned order clearly mentions about determination application in paragraph 10 and paragraph 10 of the impugned order reads as follows:

'10. On perusal of the record of Original suit, it is seen that the application made by previous learned counsel for defendant/petitioner was not allowed and hence the reason submitted by learned counsel that the petitioners did not know about the ex-parte Judgement because no summons was served on the petitioners regarding the application made by the previous

counsel of defendant for determination cannot be accepted as sufficient ground.'

[13] A careful perusal of paragraph 10 of the impugned order brings to light that the said Trial Court has not gone into the question raised by D1 to D4 & D6, i.e., the question that they never received notice in the determination application. In paragraph 10 of the impugned order, said trial court has merely said that determination application had not been allowed. This Court ferreted out the details of the determination application (Judl. M.C. No. 565 of 2018) from E-Courts website of District Courts and scanned reproduction of e-Court website (as downloaded) is as follows:

15/06/2026, 16:39

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Court of Civil Judge Senior Division, Imphal West

In The Court Of : Civil Judge Senior Division, Imphal West

CNR Number : MNIW070008762018

Case Number : Judl (misc)/0000565/2018

Date : 16-11-2018

Thokchom Ningol Ibempishak Devi Versus Thokchom Ibopishak Singh

Daily Status

Business	Nature of Disposal	Disposal Date
This misc. case is disposed of.	Dismissed for Default	16-11-2018

Therefore, the basis on which said Trial Court has proceeded i.e., that the determination application was not allowed is incorrect. In any event, there is no contra material to demonstrate that D1 to D4 & D6 were put

on notice in the determination application. Therefore, the sequitur is, D1 to D4 & D6 are entitled to contend that they were under the bonafide belief that their counsel was taking care of their interests and attending to the hearings.

[14] This takes this Court to the next point (second point) which turns on Covid period exclusion *vide* judicial order of Hon'ble Supreme Court dated 10.01.2022 in **In Re: cognizance for extension of limitation in Writ Petition(C) No. 3 of 2020**. This point is being gone into as it has been adverted to in the impugned order but it otherwise has no significance in the case at hand as the ex-parte decree was made on 25.02.2019 before 15.03.2020 and the date of knowledge is 26.08.2022 which is after 28.02.2022 as well as 29.05.2022 which is 90(ninety) days post 28.02.2022. This is extremely relevant as there is no contra material with regard to date of knowledge particularly when the plaintiff submits that ex-parte decree was set into motion only on 17.02.2021.

[15] The third and the last point is a legal issue raised by learned counsel for respondents. Learned counsel for respondents submitted that CPC provides for an appeal as against the impugned order and therefore, CRP under Article 227 ought not to have been filed. It is the specific contention of the learned counsel for respondents that CPC provides for an appeal against the impugned order *vide* Order XLIII Rule 1(d). In the considered view of this Court, this is plainly incorrect as Order XLIII Rule 1(d) talks about an order in an application under Order IX Rule 13 CPC (for setting aside ex-parte decree) and it does not deal with CoD applications/orders.

[16] Be that as it may, learned counsel for respondents pressed into service two case laws. The first case law is ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & ors. v. Tuticorin Educational Society & ors.*** case reported in **(2019) 9 SCC 538**. To be noted, download from Indian Kanoon was placed before this Court. In ***Virudhunagar Hindu Nadargal*** case, the factual matrix is that a suit seeking declaration that a notice convening a General Body meeting is illegal and a permanent injunction was filed (to be noted, there are other limbs of prayers), along with the suit, an interlocutory application under Order XXXIX Rules 1 & 2, injunction was taken out and injunction was granted by Trial Court. As against this injunction order, D5 in that suit who was third respondent before the Hon'ble Supreme Court filed a regular appeal under Order XLIII Rule 1(r) of CPC but another respondent, instead of filing a regular appeal, filed a CRP under Article 227 in the Madurai Bench of the Madras High Court, the High Court interfered and set-aside the order of injunction. It is in this backdrop that Hon'ble Supreme Court made it clear that there is a clear distinction between cases in which alternative remedy is available under CPC and cases in which alternative remedy is available under special enactments and it was made clear that while the former should be construed as near total bar, the latter is clearly a rule of discretion and is in the realm of self-imposed restriction. In this view of the matter, it will suffice to write that ***Virudhunagar Hindu Nadargal*** case does not come to the aid of the respondents for two reasons. One reason is, it is distinguishable on facts as it arose out of an injunction application under Order XXXIX Rules 1 & 2. The second reason is, ***Virudhunagar Hindu Nadargal*** case is an authority for the proposition that while alternative remedy

qua appeal provision in CPC should be construed as near total bar, alternate remedy provided under other enactments/special statutes is not an absolute Rule *qua* 227 jurisdiction and it is only a rule of discretion which is in the realm of a self-imposed restriction.

[17] As regards the second case law, it is ***Mohamed Ali v. Jaya & ors.*** and Indian Kanoon download has been placed before this Court. This is an order dated 11.07.2022 made by Hon'ble Supreme Court in **Civil Appeal No. 4114 of 2022**. Factual matrix in ***Mohamed Ali*** is that plaintiff filed a suit for specific performance *qua* an agreement to sell pertaining to immovable property. This specific performance suit was decreed ex-parte by the Trial Court on 31.10.2012 and as against this ex-parte decree, while one set of defendants viz., D2 to D4 filed an application to set-aside the decree with an application for condonation of 2345 days delay, D1 filed a separate application seeking condonation of 1522 days in filing an application to set-aside the ex-parte decree. Both the CoD applications were dismissed and while D1 did not challenge the CoD dismissal order, D2 to D4 assailed the same by way of a revision under Article 227 but in this revision, the High Court set-aside the specific performance decree by going into the merits of the matter and observing that the specific performance decree has been made by the Trial Court without application of mind (total non-application of mind) and opined that the Trial Court has not considered the aspect of readiness and willingness on the part of the plaintiff. It is in this factual matrix that Hon'ble Supreme Court set-aside the order of the High Court *inter alia* following ***Virudhunagar Hindu Nadargal*** principle and holding that when there is a specific provision

for appeal *vide* Section 104(1)(i) read with Order XLIII, Rule 1(r) of CPC, High Court should not have set-aside the decree for specific performance by going into merits. In this regard, a very interesting scenario unfurls in the instant case. The application (Judl. M.C.) for setting aside the ex-parte decree dated 25.02.2019 has been filed with the CoD application seeking condonation of 523 days delay as already alluded to *supra*. The CoD application has been numbered as Judl. M.C. No. 571 of 2022 and the impugned order has been made in the same. Simultaneously, the application for setting-aside the ex-parte decree has also been numbered and it has been assigned the sequential/next number i.e., Judl. M.C. No. 572 of 2022. This, in the considered view of this Court, is plainly incorrect. The procedure is plainly incorrect. To be noted, before proceeding further it is deemed appropriate to write that under Article 227, exercising power of superintendence, a High Court can interfere even when a wrong procedure is adopted by the Trial Court. It is in this context that this Court deems it appropriate to write that processing and assigning a number to the Order IX Rule 13 application to set aside ex-parte decree will arise only on the delay being condoned and therefore, pending CoD, the Order IX Rule 13 application ought not have been processed and assigned a number. In any event, in the case at hand, the impugned order has not been made in Judl. M.C. No. 572 of 2022 (Order IX Rule 13 application) but the impugned order has been made in Judl. M.C. No. 571 of 2022 (CoD application). Therefore, **Mohamed Ali** also does not come to the aid of the respondents. To be noted, this Court is not going into Judl.

M.C. No. 572 of 2022 and it restricts the instant legal drill to impugned order in Judl. M.C. No. 571 of 2022.

[18] Though not brought to the notice of this Court by both sides, this Court ferreted out from the e-Court website the fate of Order IX Rule 13 application i.e., Judl. M.C. No. 572 of 2022. It is seen that Judl. M.C. No. 572 of 2022 has been disposed of as having become infructuous (in website it has been typed as 'infectious' which is obviously a typographical error) owing to the order made in Judl. M.C. No. 571 of 2022 and this disposal is on 05.12.2023. It is for the revision petitioners to work out remedies either in accordance with CPC *inter alia vide* Order XLIII Rule 1(d) (against this 05.12.2023 order) if so advised and so desired or seek review. It is made clear that if the revision petitioners assail or seek review of 05.12.2023 order in Judl. M.C. No. 572 of 2022, the same shall be dealt with on its own merits and in accordance with law by the appellate Court/Court concerned *de hors* any observation in this order i.e., untrammelled by observations in this order except the operative portion (to be set out *infra*) wherein this Court will be setting aside the impugned order. This Court, for the sake of specificity, deems it appropriate to clarify that when this 05.12.2023 order in Judl. M.C. No. 572 of 2022 is assailed, the disposal order will go as in and vide 05.12.2023 order Judl. M.C. No. 572 of 2022 has been disposed of as having become infructuous owing to impugned order but this does not mean that Judl. M.C. No. 572 of 2022 will either stand allowed or dismissed. This will mean that Judl. M.C. No. 572 of 2022 which is an application under Order IX

Rule 13 CPC has to be heard out afresh on its own merits and in accordance with law so that said Trial Court can decide whether the afore-referred ex-parte decree is to be set-aside so that the suit goes for trial/contest or it is also open to the said Trial Court to dismiss the Order IX Rule 13 application if the same is warranted on merits. To put it differently, all questions in the Order IX Rule 13 application are left open for said Trial Court to decide the same on its own merits and in accordance with law. In this regard, this Court deems it appropriate to set out a scanned reproduction of order dated 05.12.2023 in Judl. M.C. No. 572 of 2022:

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Court of Civil Judge Senior Division, Imphal West

In The Court Of : Civil Judge Senior Division, Imphal West

CNR Number : MNIW070007852022

Case Number : Judl (misc)/0000572/2022

Date : 05-12-2023

Thokchom Ibopishak Singh Versus Thokchom Ningol Ibempishak Devi

Daily Status

Business	Nature of Disposal	Disposal Date
In view of the order pass in judl. Misc. case No. 571 of 2022 this Judl. Misc. Case has become infectious and hence dispose accordingly.	Disposed of	05-12-2023

In this regard, it is also made clear that all rights and contentions of plaintiff are preserved for resisting/opposing challenge/review qua Order IX Rule 13 order. The ex-parte decree dated 25.02.2019 in O.S. No. 84 of 2015 on the file of said Trial Court will continue to operate and that will be subject to Order IX Rule 13 application order appeal/review against which was disposed of on 05.12.2023.

[19] In the light of the discussions and dispositive reasoning set out thus far, it is clear that there was a determination application filed by counsel for D1 to D4 & D6(Judl. M.C. No. 565 of 2018) and that the same came to be disposed of on 16.11.2018 (dismissed for default). Therefore, the basis of the impugned order i.e., that determination application was not allowed without going into the question of whether D1 to D4 & D6 were put on notice is clearly erroneous. As already alluded to *supra* there is no contra material to demonstrate that date of knowledge of D1 to D4 & D6 is only 26.08.2022 when the revenue officials went over to the suit property for demarcation pursuant to plaintiff launching the ex-parte decree by resorting to mutation. This means that the delay sought to be condoned i.e., 523 days has been adequately and sufficiently explained by the protagonists of the CoD application i.e., revision petitioners before this Court.

[20] Ergo, the sequitur is, impugned order being Order dated 05.12.2023 made in Judl. M.C. No. 571 of 2022 in O.S. No. 84 of 2015 is set-aside/captioned CRP is allowed albeit with preservation of rights and contentions in the aforesaid manner and with observations as set out *supra*. There shall be no order as to costs.

CHIEF JUSTICE

Indrajeet / John Kom

FR/NFR

P.S. I : Upload forthwith.

P.S. II : All concerned will stand bound by web copy uploaded in High Court website inter-alia as the same is QR coded.