

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CR No.51 of 2021
Decided on: 14.09.2026

Bhesh Ram Mehta and others

...Petitioners

Versus

Shiv Singh (since deceased) through his legal representatives
Ganga Devi and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioners: Mr. Neeraj Gupta, Senior Advocate
with Mr. Ajeet Jaswal, Advocate.

For the respondents: Respondents No.1(a) to 1(g), 3(b)
and 4(a) ex-parte.

Mr. Sudhir Thakur, Senior Advocate
with Mr. Karun Negi, Advocate for
respondent No.2.

Mr. Shivank Singh Panta, Advocate
for respondents No.3(a) and 3(c) to
3(e).

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners/plaintiffs feeling aggrieved by the
judgment dated 28.11.2019, passed by the learned District
Judge Solan, District Solan, Himachal Pradesh (in short 'learned
appellate Court') in Civil Misc. Appeal No.8-S/14 of 2019, titled,

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

Sh. Bhesh Ram Mehta and others vs. Smt. Ganga Devi and others, whereby the order dated 13.03.2015, passed by learned Civil Judge (Jr. Divn), Court Number 1, Solan, District Solan, HP (in short 'learned trial Court') in C.M.A. No. 53/6 of 2007, titled, **Bhesh Ram Mehta and others vs. Shiv Singh (deceased) through LRs and others**, has been affirmed, have preferred the present petition.

2. The petitioners/plaintiffs had preferred a Civil Suit for declaration and permanent injunction under Sections 34 and 38 of the Specific Relief Act qua the land comprised in khasra Nos. 2, 695/103, 826/756/259, 448, 472, 823/639, 659,665, 822/292, 298, 434, 438, 513, 491, 496, 400 and 775/611, Khas 17 measuring 52 Bighas 9 Biswas situated in mauza Kainthari Hadbast No. 90, Pargana Bharoli Kalan, Tehsil Kasauli, District Solan, (H.P.) and the land comprised in khata/khatauni No. 1/1 and 2/2, bearing khasra Nos.2, 20, 27, 32,34, 237/36, 238/36, 42, 54, 60, 96, 110, 111, 113, 296/270/230/121, 297/270/230/121, 298/270/230/121, 319/233/124 and 25 khas 19, measuring 55 Bighas 5 Biswas situated in mauza Chakali, Hadbast No. 77, Pargana Bohchali, Tehsil and District Solan, (H.P.) (in short 'suit land'). In the said suit instituted by the petitioners/plaintiffs, issues were framed

on 15.12.2005 and thereafter the matter was listed for recording the statements of the plaintiff's witnesses. When the matter was listed on 13.08.2007, no PWs were present as roads were blocked due to landslides and the matter was listed for cross-examination of PWs on 12.09.2007. When the matter was listed on 12.09.2007, none had put in appearance on behalf of the petitioners/plaintiffs and the learned trial Court had dismissed the suit as per provisions of Order 17 Rules 2 and 3 of the Code of Civil Procedure (in short 'CPC').

3. The petitioners/plaintiffs filed an application under Order 9 Rule 9 read with Section 151 of the CPC for setting aside the dismissal order dated 12.09.2007, passed by the learned trial Court, whereby the Civil Suit No.59/1 of 2001, titled, **Bhesh Ram Mehta and others vs. Shiv Singh (deceased) through LRs and others** was dismissed, averring therein that the petitioners/plaintiffs and their counsel could not appear before the Court on 12.09.2007, due to wrong noting of the date. The counsel for the petitioners/plaintiffs had wrongly noted the date of the suit as 13.09.2007 and when one of the petitioners namely Bhesh Ram came to the Court on 13.09.2007, he could not find his case listed in the causelist and asked his counsel regarding the

same, who after making an inquiry found that the same was fixed for 12.09.2007 and was dismissed for non-appearance of the counsel as well as the petitioners/plaintiffs. It was also averred in the application that one of the plaintiffs, namely Bhesh Ram had filed his evidence by way of an affidavit in the Court well within time, but due to the fault of defendants, he has not been cross-examined on many dates. Since the application for restoration of the Civil Suit was not filed within the period of limitation, the same was accompanied by an application under Section 5 of the Limitation Act for condonation of delay.

4. The respondents/defendants No.1 to 3 filed reply to the application and denied that the plaintiff Bhesh Ram came to the Court on 13.09.2007 and when he could not find his case in the causelist, he enquired regarding the case and then from his counsel came to know that the same was fixed for 12.09.2007 and for non-appearance of the counsel as well as the plaintiff, the same was dismissed. The petitioners/plaintiffs were granted so many opportunity to produce their evidence and final opportunity was also accorded and costs amounting to Rs. 650/-, Rs 450/-, Rs.500/- and Rs.150/- were fixed to be paid by petitioners/plaintiffs to the respondents for not

producing the evidence. Ultimately when despite last opportunity, the petitioners/plaintiffs could not bring their evidence and did not pay previous costs, the suit was dismissed under Order 17 Rules 2 and 3 of the CPC and the counsel for the petitioners/plaintiffs was very much aware of this fact and thus prayed for dismissal of the application.

5. Respondent No.4 also filed reply to the application and also opposed the prayer made by the petitioners/plaintiffs. It was averred that the petitioner/plaintiff namely Bhesh Ram had been taking adjournments time and again for his cross-examination, but had repeatedly failed to appear before the Court for such purpose and ultimately the suit was dismissed under Order 17 Rule 2 of the CPC and hence the application is not maintainable at this stage and is liable to be dismissed with heavy cost. It was further submitted that the petitioner/plaintiff namely Bhesh Ram had filed his affidavit of evidence before the Court on 25.07.2006 and thereafter the matter was adjourned for his cross-examination to 29.08.2006, but he did not appear before the Court intentionally and willfully and the case was adjourned for 17.10.2006, 08.01.2007, 29.03.2007, 08.05.2007, 26.07.2007, 13.08.2007 and 12.09.2007. When the

petitioners/plaintiffs did not appear before the Court on 12.09.2007, the suit was dismissed under Order 17 Rule 2 of the CPC. The plaintiff namely Bhesh Ram got eight opportunities to produce himself before the Court for cross-examination and hence his conduct is clear that he had intentionally and willfully not appeared before the Court and had been avoiding his cross-examination and as such prayed for dismissal of the application.

6. In the application filed by the petitioners/plaintiffs under Section 5 of the Limitation Act, it was averred that the application could not be filed within time for the reason that that the wife of one of the plaintiffs namely Bhesh Ram was ill and there was no one in the family to look after the small children. It was also averred that the petitioners/plaintiffs had applied for copy of the order on 13.09.2007 and copy of the same was received by the counsel on 01.11.2007. The petitioners/plaintiffs were informed by the counsel after receipt of the copy of order regarding the filing of the present application. The petitioner/plaintiff Bhesh Ram informed the counsel regarding the illness of his wife and met the counsel on 25.11.2007 and the counsel without any further delay prepared the application and filed the same before the Court

on 27.11.2007.

7. The respondents/defendants No.1 to 3 filed reply to the application for condonation of delay and denied that the wife of the petitioner/plaintiff namely Bhesh Ram was ill and there was no one in the family to look after the small children. They further averred that the petitioners/plaintiffs are required to produce the strict proof of the averments made in the application.

8. The learned trial Court after framing the issue granted opportunities to the parties to lead their evidence. The petitioners/plaintiffs led their evidence and the respondents/defendants did not lead any evidence. The learned trial Court dismissed the application filed by the petitioners/plaintiffs noticing that many opportunities were granted to the petitioners/plaintiffs, to produce witnesses but they did not produce the witnesses before the Court even once for the purpose of cross-examination of plaintiff Bhesh Ram and cost of Rs.600/- was imposed, but despite of providing last opportunity, he did not appear before the Court for cross-examination. Further since the application was neither supported by affidavit of the learned counsel nor by his Clerk examined in Court. Hence, the petitioners/plaintiffs

have failed to show any sufficient reason for setting aside the order of dismissal in default. Further the petitioners/plaintiffs have failed to prove on record that there absence was intentional on the said date of hearing and as such dismissed the application for restoration of the suit.

9. The plea taken by the respondents/defendants that the application is not maintainable before the Court was rejected for the reason that they had failed to show that for what reason the application was not maintainable.

10. The petitioners/plaintiffs feeling aggrieved by the said order of rejection of their application, vide order dated 13.03.2015 preferred an appeal before the learned appellate Court, which was dismissed on 28.11.2019 holding that the petitioners/plaintiffs have failed to adduce any evidence for making out a reasonable case for condonation of delay in filing the application under Order 9 Rule 9 read with Section 151 of the CPC. The self-serving statement of the applicant/plaintiff Bhesh Ram examined as AW-1 is not sufficient to explain the delay occurred in filing of the said application and thus the learned appellate Court while holding the application under Order 9 Rule 9 read with Section 151 CPC to be time barred, dismissed the appeal.

11. The petitioners/plaintiffs being aggrieved by the aforesaid orders passed by the learned Courts below have approached this Court, *inter-alia*, on the grounds that the learned trial Court has committed an illegality in rejecting the application for setting aside the dismissal order on the ground of delay. Too harsh and technical approach has been adopted by the learned trial Court while dealing with the application filed under Section 5 of the Limitation Act as well as the fact that the petitioners/plaintiffs had given sufficient explanation after coming to know about the dismissal of the suit. It has also been averred in the petition that the learned trial Court had to adjust the bonafides of the petitioners/plaintiffs, however that aspect has not been considered. Likewise the learned appellate Court has committed an error in rejecting the appeal by upholding the order and thus prayed for setting aside the orders passed by learned Courts below.

12. I have heard the learned counsel for the parties and also perused the record carefully.

13. Before advertng to the submissions made by the learned senior counsel at the Bar, it would be relevant to notice few of the orders passed by the learned trial Court

before dismissing the Civil Suit. The learned trial Court had framed the issues in the Civil suit instituted by the petitioners/plaintiffs on 15.12.2005. Thereafter the matter was listed for recording the evidence of the PWs. On 12.01.2006, no PWs were present, nor steps were taken. The learned trial Court had directed the petitioners/plaintiffs to produce the evidence on self-responsibility on 04.03.2006. When the matter was listed on 04.03.2006 again no PWs were present, nor steps were taken and the time was granted to the petitioners/plaintiffs to produce the evidence on self-responsibility and the matter was listed on 01.05.2006. On 01.05.2006, no PWs were present, however, the learned trial Court had allowed the time sought, subject to cost of Rs.150/- and the matter was listed for producing the evidence of PWs on self responsibility on 25.07.2006. On 25.07.2006, affidavit of one PW Sh. Bhesh Ram was tendered and the matter was adjourned for his cross-examination on 29.08.2006. The matter was again listed on 29.08.2006, when the matter was adjourned for cross-examination on 17.10.2006, subject to cost of Rs.150/-, however, no PWs were present on 17.10.2006, again an opportunity was granted, subject to cost of Rs.150/-. When the matter was listed on 08.01.2007,

vice counsel for defendants No.1 and 2 stated at the Bar that the original counsel is out of station and time was prayed, which was allowed and the matter was listed for cross-examination of the plaintiff namely Bhesh Ram on 29.03.2007. Again on 29.03.2007, an adjournment was prayed on behalf of counsel for defendant No.4, who was not present since he was not well and the matter was listed for cross-examination of the plaintiff namely Bhesh Ram on 08.05.2007. When the matter was listed on 08.05.2007, parties prayed time for cross-examination. Prayer was allowed and the matter was listed for cross-examination on 26.07.2007. On 26.07.2007, when the matter was listed, one more opportunity was allowed to examine the PWs and the matter was listed on 13.08.2007. On 13.08.2007, Bhesh Ram plaintiff could not remain present for the reason that the roads were blocked due to landslides and the matter was listed for his cross-examination for 12.09.2007. However, when the matter was listed on 12.09.2007, neither the petitioners/plaintiffs nor their counsel was present and the suit was ordered to be dismissed as per provisions of Order 17 Rules 2 and 3 of the CPC. One of the petitioners/plaintiffs namely Bhesh Ram had come to the court on 13.09.2007 and

when he did not find the case in the causelist, he inquired from his counsel, who after verifying from the record found that the case was listed on 12.09.2007 and the same was dismissed in default. Thereafter, the petitioners/plaintiffs had applied for the certified copy of the order and after obtaining the copy of the order applications were filed on 27.11.2007 for setting aside the dismissal order and also for condoning the delay.

14. Learned senior counsel for the petitioners/plaintiffs has vehemently argued that as per the relief claimed in the Civil Suit, the property in dispute was to the extent of 55 bighas and 5 biswas and the petitioners/plaintiffs had filed the applications for setting aside the order of dismissal of Civil Suit and condonation of delay, when it was noticed by the petitioners/plaintiffs on 13.09.2007 that the Civil Suit was dismissed in default. He pressed into service the judgments of the Hon'ble Supreme Court passed in ***Mahendra Rathore vs. Omkar Singh and others*** (2002) 10 SCC 673, ***Dwarika Prasad (D) Thr. Lrs. vs. Prithvi Raj Singh***, 2025 (1) RCR(Civil) 359 and judgment passed by the coordinate Bench of this Court in CR No.95 of 2014, titled, ***Kuldeep Singh vs. Gaurav and others***, and prayed for quashing and setting

aside the orders passed by the learned Courts below. He also prayed that some reasonable cost can be put on the petitioners/plaintiffs, but their right cannot be foreclosed on account of the orders passed by the learned Courts below.

15. On the other hand, learned senior counsel representing respondent No.2 has placed reliance upon the judgment passed by the Madhya Pradesh High Court (Indore Bench) in Civil Revision No.5 of 2019, titled, **Mehrun Nisha vs. Rajendra Singh & Ors.**, and submitted that the application under Order 9 Rule 9 of the CPC is not maintainable for restoration of the suit, especially when the suit has been dismissed under the provisions of Order 17 Rule 2 and 3 of the CPC.

16. Learned counsel representing respondent Nos.3(a) and 3(c) to 3(e) has also contended that the application under Order 9 Rule 9 of the CPC was not maintainable once the suit filed by the petitioners/plaintiffs has been dismissed under Order 17 Rule 2 and 3 of the CPC. He while placing reliance upon the judgments of the Hon'ble Supreme Court in **P.K. Ramchandran vs. State of Kerala and another** (1997) 7 SCC 556, **R.B. Ramlingam vs. R.B. Bhvaneswari** (2009) 2 SCC 689, **Lanka Venkateswarlu (dead) by LRS.**

vs. State of Andhra Pradesh and others (2011) 4 SCC 363, **Basawaraj and another vs. Special Land Acquisition Officer** (2013) 14 SCC 81 and Civil Appeal No.1948 of 2013, titled, **Prem Kishore & Ors. vs. Brahm Prakash & Ors.**, submitted that the Courts by condoning the delay has to exercise its discretion judiciously based on facts and circumstances. He further contended that the sufficient cause cannot be liberally interpreted if negligence or inaction or lack of bonafides is attributable to the party.

17. I have given my thoughtful consideration to the submissions made at the Bar. So far as the first submission made by learned senior counsel/counsel representing the respondents/defendants that the application is not maintainable since the suit has been dismissed under Order 17 Rule 2 and 3 of the CPC is concerned, the said submission cannot be accepted for the reason that the respondents/defendants had not taken a specific plea while filing replies either to the application under Order 9 Rule 9 of the CPC or to the application under Section 5 of the Limitation Act. Not only this, the learned trial Court while dismissing the application filed by the petitioners/plaintiffs had specifically taken note of the fact that the

respondents/defendants had failed to show that for what reason the present application was not maintainable. The respondents/defendants have not assailed the order passed by the learned trial Court, whereby the said findings have been returned against them. Even otherwise since the learned trial Court has not dismissed the suit by specifically taking note of Order 17 Rule 3(a) of the CPC, it cannot be construed that the application instituted by the petitioners/plaintiffs is not maintainable.

18. Learned senior counsel representing respondent No.2 had cited the judgment delivered by the Madhya Pradesh High Court in **Mehrun Nisha's** case (supra), in which the party had taken the specific objection while filing reply to the application filed under Order 9 Rule 4 read with Rule 9 of the CPC that the same is not maintainable. In the present case, since a specific plea has not been taken and further the learned trial Court had given the specific finding that the plea taken by the respondents/defendants that the application is not maintainable, has been negated, the said plea cannot be permitted to be raised at this stage, more especially when the respondents have not challenged the said part of the order.

19. Learned senior counsel representing the petitioners/plaintiffs has cited the judgment referred to above by a three-Judge Bench of the Hon'ble Supreme Court in ***Mahendra Rathore's*** case (supra), wherein it was held that the Court should adopt justice oriented approach and not too technical or pedantic approach is expected to be adopted by the Court. In the present case, the learned trial Court has rejected the application filed by the petitioners/plaintiffs on the ground that the petitioners/plaintiffs have not produced the copy of the diary, the counsel representing the petitioners/plaintiffs has not been examined nor the affidavit of the counsel was appended with the application. The petitioners/plaintiffs had examined one of the plaintiffs as AW-1, who had deposed that the wrong date of the hearing was recorded in the diary. It is relevant to notice at this juncture that the suit was dismissed in default on 12.09.2007 and one of the plaintiffs namely Bhesh Ram had come to the Court on 13.09.2007 who was to be cross-examined. When he found that the matter was listed on 12.09.2007, he immediately applied the copy of the order and after receipt of the copy of the order, the application was immediately filed for restoration of the Civil Suit. The learned trial Court has

not taken into consideration the fact that the petitioners/plaintiffs had instituted the Suit for Declaration in which the land to the extent of 55 bighas and 5 biswas was involved and the learned appellate Court also has not been right in rejecting the appeal.

20. It is settled law that the Courts are meant to advance substantial justice between the parties and not to thwart the justice. However, in the present case, both the learned Courts below have taken hyper-technical view while dismissing the application filed by the petitioners/plaintiffs, whereby they had prayed for setting aside the order of dismissal dated 12.09.2007 after condonation of delay in filing the application.

21. Learned senior counsel/counsel representing the respondents/defendants have vehemently argued that it is not the long delay which is required to be explained, but the conduct of the parties has also to be seen at the time of considering the application for condonation of delay. In the present case, since no valid reason has come forth, the Courts below have rightly rejected the applications. However, the said contention cannot be accepted for the reason that there was delay of only 45 days in filing the application for

restoration of the Civil Suit and the respondents/defendants did not examine any witness to rebut the evidence led by the petitioners/plaintiffs and, therefore, it is a fit case to grant the substantial justice to the petitioners/plaintiffs by invoking revisional jurisdiction by this Court to set aside the order passed by the learned Courts below. However, the same would be subject to the payment of cost of Rs.10,000/- to be paid by the petitioners/plaintiffs which shall be paid in equal proportions to the respondents/defendants.

22. Consequently, the present petition is allowed and the impugned orders of both the Courts below are quashed and set aside, however, subject to payment of cost of Rs.10,000/- which shall be paid by the petitioners/plaintiffs to the learned counsel for the respondents/defendants or the respondents/defendants on the next date of hearing before the learned trial Court. The parties are directed to appear before the learned trial Court on **17.10.2026**. Thereafter, the learned trial Court will fix the matter for recording the evidence of the plaintiffs and in any case, the evidence of the plaintiffs will be recorded within two months from the aforesaid date of appearance by affording not more than two opportunities to produce their entire evidence, failing which

the evidence of the plaintiffs shall be closed without any other further opportunities. Needless to say that the defendants will be given opportunities to record their evidence thereafter. Record of the learned Courts below be sent back forthwith. Pending applications, if any, also stand disposed of.

14.09.2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**