



2026:AHC:193553

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 1634 of 2025

Hansraj (Since Deceased) And 6 Others

.....Appellant(s)

Versus

Jamuna Prasad (Since Deceased) And 26 Others

.....Respondent(s)

Counsel for Appellant(s)	: Anupam Kulshreshtha, Shatakshi Shukla, Umang Srivastava
Counsel for Respondent(s)	: Ajay Kumar Singh, Ashish Kumar Singh, Birendra Kumar, Himanshu Dubey

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Heard learned counsel for the appellants and learned counsel for respondents.
2. The instant appeal has been preferred by the appellants with a prayer to set aside the judgment and order dated 30.4.2025 passed by the learned Additional District Judge/Fast Track Court-I, Jaunpur in Civil Misc. Case No. 01 of 2023 (CNR No. UPJP010021832023) (Hansraj and others vs. Jamuna Prasad and others). Civil Misc. Case No. 01 of 2023 was filed with a prayer to set aside the order dated 30.11.2021, whereby Civil Appeal No. 29 of 1977 was dismissed. The said prayer was rejected by the impugned order dated 30.4.2025.
3. Briefly stated, O.S. No. 293 of 1968 (Jamuna Lal vs. Pabbar and 3 others) with a prayer for ejectment of tenants was filed by the respondent-plaintiff, which was decreed on 17.1.1977. Subsequently, one of the defendants filed Civil Appeal No. 29 of 1977. During the pendency of the appeal, defendant no. 1 died in the year 1985 and his legal heirs were substituted during the pendency of the appeal. An application under Order 41 Rule 27 CPC was filed by the appellant-defendant before the appellate court, which was dismissed, and the order of dismissal dated 14.9.1988 was challenged in Writ Petition No. 19630 of 1988. In the said writ petition, proceedings of the appeal were stayed and notices were issued.
4. However, the said Writ Petition No. 19630 of 1988 was dismissed on

merits on 9.1.2004. Subsequently, when the appeal was revived after the intimation of the order dated 9.1.2004 was sent to the concerned district, the said appeal was dismissed for non-prosecution on 30.11.2021. Subsequently, an application under Order 41 Rule 19 CPC was moved by the present appellants on 17.3.2023. The said application was dismissed by the learned trial court vide its impugned order dated 3.4.2025. Aggrieved by the order dated 3.4.2025, the present appeal has been preferred.

5. Learned counsel for the appellants submitted that the said appeal was dismissed for non-appearance of the present appellants, who are also appellants in Civil Appeal No. 29 of 1977, not due to any fault on the part of any of the appellants, rather due to other factors. Most of the parties, including the appellants as well as the respondents, had died during the long pendency of this appeal. Some of them were substituted and others remained unsubstituted. The present appellants had no notice of the pendency of the said appeal because the appeal was heard on merits on 4.3.2021 in the presence of one of the deceased appellants, Vanshraj, and the judgment was reserved. Therefore, the appellants were under the impression that once the appeal, after being heard on merits, had been reserved for judgment, its outcome would only be the delivery of judgment rather than its dismissal in default. He submitted that the present appellants were unaware of the proceedings because, out of many appellants, some of them had died and only one of the deceased appellants, Vanshraj, was doing pairvi of the case. The other deceased appellants and their legal heirs were unaware of both the pendency of the appeal and its subsequent dismissal for non-prosecution. These facts were completely ignored by the learned trial court, despite the fact that they had no notice of the pendency of the appeal.

6. The delay in filing the restoration application was not so inordinate as to be incapable of being compensated by costs. The delay was only of two years and the cause was sufficiently explained before the learned appellate court. However, the same was not considered by it and their application under Order 41 Rule 19 CPC was dismissed without any basis.

7. Per contra, learned counsel for the respondent-plaintiff submitted that the ground raised by the appellants in their restoration application under Order 41 Rule 19 CPC as well as in their arguments is contrary to the facts available on record. The learned court has discussed each and every stage undergone during the pendency of the appeal. It has specifically mentioned

that the court, after receiving information about the order dated 19.01.2004 passed in Writ Petition No. 19630 of 1988, vide letter dated 7.10.2021 from the Hon'ble High Court issued notices to all the parties. The notices issued to all the parties returned with the endorsement that appellants Vanshraj, Wahid, Aisha, Zahira and Sukdei had died and other appellants were not found at the given address. Similarly, the death report of one of the respondents, Jamuna Prasad, was also mentioned in the notice. One of the appellants, 1/3 Ram Karan, refused to accept the notice.

8. After the notices were received in the court, three consecutive dates, i.e., 9.11.2021, 10.11.2021, and 26.11.2021, were fixed in the appeal, and appellant Ram Karan appeared in the proceedings on 15.11.2021 by filing his vakalatnama. But again, he remained absent on 26.11.2021 and 30.11.2021, due to which the appeal was dismissed for non-prosecution in the absence of both the parties. The learned court has also mentioned that other appellants, Vansraj and Hansraj, had also put in their appearance in the proceedings by filing their vakalatnama in Civil Appeal No. 29 of 1977, which clearly manifests that they were well aware of the pendency of the appeal. Even a vakalatnama on behalf of one of the appellants, Sanjay, was filed, and this Sanjay had also filed a substitution application, which was subsequently allowed.

9. Learned counsel for the respondent contended that all the facts recorded by the learned court in its findings are very much evident to show that the appellants were well aware of the pendency of the appeal and the proceedings which were pending before the court. Therefore, they cannot now deny that they were not aware of the proceedings of the appeal and were under the impression that the proceedings were still kept in abeyance due to the earlier stay order passed by this Court in the writ petition. It was submitted that the findings recorded by the learned court do not warrant any interference.

10. Heard learned counsel for the parties and perused the impugned order passed by the appellate court. The facts argued by learned counsel for the appellant are contrary to the available records. His case and argument from the very beginning are on the premise that only one of the appellants, Vansraj, was doing the pairvi of the case and others were unaware of it. However, after the death of Vansraj, the other appellants could not become aware of the proceedings because it was only Vansraj who knew about the

proceedings which were carried out in the appeal. The said fact is nowhere supported by the findings of the learned appellate court. The facts raised in the grounds of appeal by the appellant themselves reflect that after the order dated 19.01.2004 was received in the appellate court, notices to all the parties were issued twice by the learned appellate court. The said notices were also pasted on their doors. Even some of them appeared and filed vakalatnama. Ram Karan filed his vakalatnama and one Sanjay not only filed his vakalatnama but also filed a substitution application. Therefore, the excuse that the other appellants remained unaware of the proceedings cannot be sustained at this stage.

11. Hence, the findings recorded by the learned appellate court dismissing the application of the appellant under Order 41 Rule 19 CPC along with the delay condonation application under Section 5 of the Limitation Act are upheld. This appeal is dismissed.

September 15, 2026
Ujjawal

(Anil Kumar-X,J.)