

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(227) No. 461 of 2016**

Seeta Devi Khandeliya W/o Late Kishori Lal Khandeliya, Aged About 75 Years R/o Mahantpara, Sivrinarayan, Tah. Navagarh, Dist. Janjgir Champa (Chhattisgarh)

---- Petitioner

Versus

1. Sakun Devi W/o Kamal Kumar, Aged About 56 Years
2. Raja Kedia, S/o Kamal Kumar, Aged About 38 Years
3. Vinay Kedia, S/o. Kamal Kumar Kedia, Aged About 36 Years

Respondents No.1 to 3 are R/o Vill Shivrinarayan, Tah. Navagarh, Dist. Janjgir Champa (Chhattisgarh) Present Address : Vill Darri, Dist- Korba (Chhattisgarh)

4. Vikash, S/o Kamal Kumar Kedia, Aged About 31 Years R/o Vill Bhoghapara, Shivrinarayan, Tah. Navagarh, Dist. Janjgir Champa (Chhattisgarh)
5. Pooja Kedia, D/o Kamal Kumar Kedia, W/o Ashish Bansal, R/o Rani Sati Mandir Ke Pass, Bansal General Store, Bhatapara, Dist-Baloda Bazar Bhatapara (Chhattisgarh)
6. Shashi Kedia, D/o Ganesh Prasad Kedia, Aged About 59 Years, R/o Vill Mahantpara Shivrinarayan, Tah. Navagarh, Dist. Janjgir Champa (Chhattisgarh)
7. Seema Khandeliya, D/o. Kishori Lal Khandeliya, Aged About 33 Years R/o Raigarh, Dist. Raigarh (Chhattisgarh)
8. Shankar Lal Khandeliya, S/o. Dwarika Prasad Khandeliya, Aged About 57 Years
9. Narayan Prasad Khandeliya, S/o. Dwarika Prasad Khandeliya, Aged About 55 Years
Both R/o Mela Ground, Sivrinarayan, Tah. Navagarh, Dist. Janjgir Champa (Chhattisgarh)
10. State Of Chhattisgarh Through Collector, Janjgir Champa (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr.Ravindra Sharma, Advocate
For Res.No.1 to 4	:	Mr.Govind Dewangan, Advocate
For State	:	Ms Ashtha Shukla, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**

22/11/2016

1. Suit filed by the plaintiffs/respondents No.1 to 6 was dismissed in default on 27.11.2009. Application for restoration of the suit filed under Order 9 Rule 9 read with Section 151 of the CPC was dismissed for want of prosecution on 24.1.2012. Thereafter, the plaintiffs/respondents No.1 to 6 preferred repeat application for restoration of the suit on 21.2.2012, which was dismissed finding no merit in the application for restoration holding that it is not properly constituted. Against which, the plaintiffs/respondents No.1 to 6 preferred Misc. Civil Appeal under Order 43 Rule 1(C) of the CPC, which was allowed by impugned order dated 21.6.2016 and suit was restored in its original number for hearing and disposal in accordance with law.

2. Being aggrieved and dissatisfied with the order, the petitioner has filed the instant writ petition under Article 227 of the Constitution of India.

3. Mr.Ravindra Sharma, learned counsel appearing for the petitioner, would submit that the petitioner was not impleaded as party before the First Appellate Court and behind her back, order was passed. First application for restoration was dismissed for want of prosecution and therefore, repeat application for restoration was not maintainable, but the First Appellate Court without considering the aforesaid fact and without impleading her as party, allowed the appeal and therefore, the order impugned be set aside.

4. Mr.Govind Dewangan, learned counsel appearing for

respondents No.1 to 4, would submit that the present petitioner was impleaded as party before the trial Court. He would further submit that interest of the present defendant has substantially been represented by other defendants.

5. I have heard learned counsel appearing for the parties, perused the order impugned and other documents appended with the writ petition.

6. The plaintiffs' first application for restoration was dismissed for want of prosecution. Thereafter, the plaintiffs preferred second application, which was dismissed finding no merit in the application for restoration. Thereafter, the plaintiffs preferred Misc. Civil Appeal before the First Appellate Court, which was allowed finding sufficient and good cause for non-appearance when the case was called up for hearing by the trial Court.

7. The Supreme Court in the matter of **N. Balakrishnan Vs. M. Krishnamurthy**¹ has held that the explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction.

8. Decision i.e. **Nathu Prasad Vs. Singhai Kapurchand**² cited by Mr.Ravindra Sharma is not applicable to the facts of the present case.

9. Since, the First Appellate Court has found sufficient reasons

¹ (1998) 7 SCC 123

² AIR 1976 Madhya Pradesh 136 Full Bench

for restoration of the suit, I do not find any substance in the present writ petition. The First Appellate Court has exercised its discretion in accordance with law.

10. Applying its earlier decision in Surya Dev Rai v. Ram Chander Rai³ and Shalini Shyam Shetty v. Rajendra Shankar Patil⁴, the Supreme Court in Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal⁵ has held that supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or certiorari jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

3 (2003) 6 SCC 675

4 (2010) 8 SCC 329

5 (2013) 9 SCC 374

11. Consequently, the writ petition being without substance is liable to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-