

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CR No. 87 of 2017**

- Guju Satnami, S/o Laltu Satnami (died during pendency of suit on 08.12.2012) the Legal Heirs of the deceased are petitioners No.1 to 4) (Name of deceased is mentioned in the cause title and legal heirs of deceased not substituted before trial Court).
- **(1)** Manharan Aged about 30 Years S/o Late Guju Satnami, R/o Sikola Basti, Durg, Tahsil And District Durg (C.G.)  
**(2)** Manoj Aged about 21 Years S/o Late Guju Satnami, R/o Sikola Basti, Durg, Tahsil And District Durg (C.G.)  
**(3)** Devendra Aged about 18 Years S/o Late Guju Satnami, R/o Sikola Basti, Durg, Tahsil And District Durg (C.G.)  
**(4)** Sat Bai Aged about 58 Years Wd/o Late Guju Satnami, R/o Sikola Basti, Durg, Tahsil And District Durg (C.G.).....(Defendants)

---- **Petitioners****Versus**

1. Smt. Ramshila Bai W/o Muktawan Das, Aged About 55 Years R/o Village Nagpura, P. S. Pulgaon, Tahsil & District Durg (C.G.)
2. Smt. Radhiya Bai W/o Fattu Ram, Aged About 42 Years R/o Village Thakurtola, Tahsil & District Rajnandgaon (C.G.)
3. Smt. Rati Bai, W/o Dhram Das Banjare, Aged About 47 Years R/o Sikosa Basti, Durg, Tahsil & District Durg (C.G.)
4. Smt. Ratna Bai W/o Santu Ram, Aged About 40 Years R/o Sikola Basti, Durg, Tahsil & District Durg (C.G.)
5. Smt. Dropati Bai, W/o Fattu Ram, Aged About 30 Years R/o Farid Nagar, Supela, Bhilai, Tahsil And District Durg (C.G.)
6. State Of Chhattisgarh Through Collector, Durg, District Durg (C.G.)..... (Plaintiffs)

---- **Respondents**


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| For Petitioners           | : | Shri Ashish Surana, Advocate   |
| For Respondent No.6/State | : | Shri R.K.Jaiswal, Panel Lawyer |

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**Hon'ble Shri Justice Sanjay Agrawal****Order On Board****19/05/2017**

Heard on admission.

2. This is the revision petition filed by the applicants by questioning the order dated 08.03.2017 passed by the 2<sup>nd</sup> Additional District Judge, Durg, in M.J.C. No.67/2015, by which, the trial Court, while exercising the powers enumerated under Order 9 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code of 1908' in short), has restored the plaintiffs' suit.

3. The undisputed facts of the case are that the non-applicants No. 1 to 5/plaintiffs have instituted a suit in the year 2011 for partition. The suit was adjourned from time to time and ultimately when it was listed on 20.02.2015, it was dismissed for non-prosecution of the plaintiffs. For obtaining the certified copy of the said order, the plaintiffs have applied for the same on 24.02.2015 and accordingly the certified copy of the said order was delivered on 12.05.2015 and immediately thereafter the application as required under Order 9 Rule 9 read with Section 151 of the Code of 1908 has been filed on 15.05.2015. After considering the said application for restoration of the suit dismissed in default on 20.02.2015, the trial Court, while exercising its discretionary power, has restored the suit in its original number.

4. Being aggrieved with the aforesaid order, the applicants have preferred this civil revision. Mr. Ashish Surana, learned counsel for the applicants submits that in absence of application for condonation of delay, the trial Court has erred in entertaining the said application which was filed under Order 9 Rule 9 read with Section 151 of the Code of 1908 by restoring the suit in its original number.

5. I have heard learned counsel for the applicants and perused the relevant papers annexed with the petition.

6. It is stated by the plaintiffs in their application for restoration of the suit dismissed in default on 20.02.105 that on the said date they all have gone to their relatives' house as one of their close relative member, namely, Mohit has passed

away and, their counsel was also out of the station on the said date as he went to Chhindwara for the treatment of his wife. The said contentions were duly supported by the affidavit of one Raghiya Bai and whose statement could not be rebutted in her cross-examination. The trial Court, after considering all the relevant facts, has come to the conclusion that because of the said reasons they could not appear on 20.02.2015 when the suit was dismissed in default. Consequently, it was held by the trial Court that non-appearance of the plaintiffs on the said date appears to be bona fide and, in consequence, allowed the said application for restoration of suit to its original number. The reasonings as assigned by the trial Court were based upon proper appreciation of evidence, therefore, deserve to be and are hereby affirmed.

7. Perusal of the record would show further that the plaintiffs have applied for obtaining the certified copy of the said order dated 20.02.2015 immediately upon its dismissal on 24.02.2015. Pursuant thereto, the certified copy of the said order was delivered to them on 12.05.2015. After obtaining the same, the plaintiffs have immediately initiated the proceedings for its restoration as per the provisions prescribed under Order 9 Rule 9 of the Code of 1908 on 15.05.2015. In such circumstances, it cannot be held that there is any delay even in filing the said application for its restoration.

8. In view of the foregoing observation, I do not find any infirmity in the order impugned, so as to interfere the same, as passed by the trial Court. Accordingly, the revision, being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

**(Sanjay Agrawal)**  
Judge