IN THE HIGH COURT OF JHARKHAND AT RANCHI
M. A. No. 87 of 2023

1. Mostt. Munni, wife of Late Ganesh Sao
2. Naresh Sao @Naresh Prasad, son of Late Madhu Sao,
3. Mahesh Sao @ Mahesh Prasad, son of Late Madhu Sao, All are residents of Village Bargaon, P.O. Bargaon, P.S. Mandu, District Ramgarh

.... Appellants

Versus

1. Choudhary Prasad, son of Late Chhatru Sao, resident of village Lakhe, P.S. Muffasil, P.O. Hazaribag, District Hazaribag
2. Chetri Devi, wife of Mahabir Sao, resident of village Hesalong, P.O. Hesalong, P.S. Giddi, District Hazaribag
3. Bhulia Devi, wife of Drigpal sao, resident of village Kuju, P.O. Kuju, P.S. Mandu, District Ramgarh
4. State of Jharkhand through the Deputy its office Commissioner, Ramgarh having its office Ramgarh Collectorate, Ramgarh, P.O. + P.S. + District Ramgarh
5. The Land Acquisition its Officer, Ramgarh, Ramgarh having its office Ramgarh Collectorate, Ramgarh, P.O. + P.S. + District Ramgarh
6. The Anchal Adhikari, Mandu, having its office at Mandu, P.O. & P.S. Mandu, District Ramgarh. … …. Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellants :Mr. Pratik Sen, Advocate
For the State : Mr. Gyan Prakash Tiwari, AC to GP-III

Order No. 05 / Dated : 12.12.2025.

1. Appellants are the defendants who preferred appeal against the judgment and decree passed in the suit. The appeal was dismissed for default and they preferred restoration application under Order XLI Rule 19 of the CPC. The said restoration application was rejected by the learned appellate court vide order dated 02.03.2023. Instant miscellaneous appeal has been filed under XLIII Rule 1 (t) of the CPC for setting aside the order dated 02.03.2023.
2. It is submitted by the learned counsel appearing on behalf of the appellants that the suit was filed in the year 2011 since the husband of the appellant no.1, Ganesh Sao had died suffering from cancer, therefore on some dates no step could be taken for hearing of the appeal.
3. Learned First Appellate Court without adverting to these facts has dismissed the revocation case, only on the ground that the appellants failed to appear on six consecutive dates for hearing the appeal.
4. Learned counsel appearing on behalf of the plaintiffs/respondents submitted that the appeal was dismissed in the year 2014 whereas the

revocation case was filed after five years i.e., 2019.

5. Having considered the submission advanced on behalf of both sides, issue of delay in preferring restoration case cannot be raised at this stage, as the delay in preferring the same been condoned and the order attained finality.
6. Thus, it was not within the province of the successor court to comment that the order of condonation of delay was not proper.
7. It has been held in ***Commissioner, Mysore Urban Development Authority v. S.S. Sarvesh*, (2019) 5 SCC 144**

> ***17.*** *Vivian Bose, J., speaking for the Bench, in his distinctive style of writing made the following observations while dealing with the case arising out of Order 9 and reminded the courts of their duty while deciding the case. The observations are apt and read as under: (AIR p. 429, paras 16-17)*
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> *"16. ... a code of procedure must be regarded as such. It is 'procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it.*
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> *17. ... our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."*

8. This Court is of the view that first appeal being a valuable right, of the appellant, application for restoration ought to have been allowed. Impugned order is not sustainable and is accordingly allowed.

Miscellaneous Appeal is allowed.

Pending I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)

Pawan/ -
Uploaded
16.12.2025