2026:JHHC:27325

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No.14 of 2025

Smt. Anita Devi, Aged about – 36 Years, wife of Vinay Rawani, Resident of Near Babu Lal Gali, Gyan Bharti, Jora Phaytak, P.O.-Dhanbad, P.S. Dhanbad, District – Dhanbad, Jharkhand. **…. …. Appellant(s)**

Versus

Shankar Prasad @ Shankar, Son of Late Sita Ram Mistry, Resident of Joraphatak Road, P.S.-Dhansar, P.O.-Dhanbad, District-Dhanbad.

…. …. Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant(s) : Mr. Bhaswat Prakash, Adv.
For the Respondent(s) : Mr. Birendra Kumar, Adv.

13/Dated: 10th September, 2026

1. Heard learned counsel appearing for the appellant and learned counsel appearing for the respondent.

2. This appeal has been preferred under Order XLIII Rule 1 of the C.P.C., 1908. The prayer is for setting aside the order dated 10.08.2022 passed in Miscellaneous (Civil) Case No. 68 of 2019 by the learned Additional Sessions Judge-1st, Dhanbad.

3. Learned counsel appearing for the appellant submits that initially, the said order was challenged in W.P.(C) No. 4245 of 2022, but vide order dated 07.11.2022, the petitioner was permitted to convert the said W.P.(C.) into C.M.P. Thereafter, it was converted into C.M.P. No. 817 of 2022. He submits that during the pendency of the said C.M.P., it transpired that the appeal would lie and, in view thereof, by leave of the Court vide order dated 04.12.2023, the petitioner was permitted to file a petition for converting the said C.M.P. into an appeal. Thereafter, the appellant filed an interlocutory application being I.A. No.11182 of 2023 for converting the C.M.P. into an appeal, which was allowed on 02.01.2025. Thereafter, the said C.M.P. was converted into an appeal and numbered as Miscellaneous Appeal No. 14 of 2025.

4. Learned counsel for the appellant submits that the sole respondent instituted Title Eviction Suit No. 48 of 2007 against the appellant, stating that she as well as her father were tenants of the respondent. He next submits that

after hearing the parties and considering the evidence available on record, the learned Civil Judge, Junior Division No. 1, Dhanbad decided the case and ultimately dismissed Title Eviction Suit No. 48 of 2007 vide judgment dated 25.08.2017. He submits that against the said judgment, the sole respondent preferred Civil Appeal No. 96 of 2017, which was allowed in favour of the sole respondent vide judgment dated 17.01.2019. He submits that the said Civil Appeal No. 96 of 2017 was decided *ex parte* and the appellant herein had not been served with notice. He next submits that subsequently, when it transpired in the execution case that execution proceedings were going on, the appellant herein preferred a petition under Order XLI Rule 21 of the C.P.C., which was registered as Misc. (Civil) Case No. 68 of 2019. He submits that the learned Court was pleased to dismiss the said miscellaneous case vide order dated 10.08.2022, recording a finding that the appellant had been served with notice. He submits that the appellant had never received any notice and was also not aware of the paper publication relating to Civil Appeal No. 96 of 2017. On these grounds, he submits that the said order may kindly be set aside.

5. Mr. Birender Kumar, learned counsel appearing for the sole respondent, opposes the prayer and submits that the learned Court has given reasons for dismissing Misc. (Civil) Case No. 68 of 2019. He submits that the notice sent through registered post was returned with an endorsement that the person was not residing at the given address and, subsequently, paper publication was made for her appearance. However, she chose not to appear and, in view thereof, the learned Court passed the order.

6. In view of the submissions made by learned counsel for the parties and upon going through the records and the judgment, it transpires that Title Eviction Suit No. 48 of 2007 was instituted by the sole respondent against the appellant herein, which was decided vide judgment dated 25.08.2017 and the said eviction suit was dismissed. Against the said judgment, the sole respondent herein preferred Civil Appeal No. 96 of 2017, which was decided *ex parte* vide judgment dated 17.01.2019. Against the said judgment, the appellant herein preferred a petition under Order XLI Rule 21 of the C.P.C.,

which was registered as Misc. (Civil) Case No. 68 of 2019. The learned Court, vide order dated 10.08.2022, was pleased to dismiss the said petition.

7. On perusal of the said order, it transpires that the learned Court has noted that notices were issued and the notice sent through registered post was returned with an endorsement that the named person was not residing at the said address. Thereafter, paper publication was made and, subsequently, the learned Court came to the finding that the appellant herein had intentionally not appeared and was pleased to dismiss the said petition.

8. In view of the above, it is crystal clear that the registered post notice was returned with an endorsement that the noticee was not found at the given address. However, it is not clear as to at which address the said notice was issued. The same is also not clear from the order passed by the learned Court in Misc. (Civil) Case No. 68 of 2019.

9. In the aforesaid order, there is no whisper regarding any satisfaction recorded by the learned trial Court about the non-service of notice upon the appellant and that she was avoiding service despite repeated efforts made by the learned Court. Before resorting to the provisions of Order V Rule 20 of the C.P.C., it was incumbent upon the learned trial Court to record its satisfaction that the appellant was avoiding service. The trial Court did not record the statement of the process server who had taken the summons for service upon the appellant at the address shown in the plaint. Further, from the order, it is not clear whether the said notice was issued at the correct address or not.

10. The Hon'ble Supreme Court in the case of The Hon'ble Supreme Court in the case of ***"Smt. Yallawwa V. Smt. Shantavva"*** reported in ***AIR 1997 SC 35*** held that the Trial Court could not have almost automatically granted the application for substituted service without taking steps for serving the respondent by ordinary procedure as laid down by Order 5 Rules 12, 15 and 17 of the C.P.C. It must be kept in view that substituted service has to be restored as the last resort when the defendant cannot be served in the ordinary way and the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other

reason the summons cannot be served in the ordinary way. Evidence has also not been led on the issue of service of notice.

11. It is well settled that merely because a wrong provision of law has been invoked, the right of a person cannot be curtailed. As noted hereinabove, initially the appellant had filed W.P.(C.), which was subsequently converted into C.M.P. and, thereafter, in view of the leave granted by the Court, an application was filed for converting the said C.M.P. into an appeal, which was subsequently converted into the present miscellaneous appeal.

12. In the aforesaid background, the order dated 10.08.2022 passed in Miscellaneous (Civil) Case No.68 of 2019 is hereby set aside.

13. The matter is remitted back to the learned court to pass order afresh in accordance with law and on merit and as such the Miscellaneous (Civil) Case No.68 of 2019 is restored to the file of the learned Additional Sesions Judge-st, Dhanbad. The appellant and the sole respondent will appear before the learned court on 29th September, 2026 on 10.30 a.m. and the appellant and the sole respondent will not take plea before the learned court that they were not knowing about the date as the date has been fixed on 29th September, 2026 for appearance of both the sides in presence of the learned counsels of appellant and respondent.

14. Both the parties will take endeavour for early disposal of the said case. Unnecessary adjournment will not be taken by either side. The learned court will decide the same in accordance with law.

15. This appeal is allowed in above terms and disposed of. Pending I.A., if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated: 10th September, 2026
Amar/- A.F.R.
Uploaded on 16.09.2026