CGHC010040032023

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 160 of 2023

1 - Kamal Narayan Verma S/o Shri Angadram Verma Aged About 54 Years R/o Village Siltara, Tehsil And, District : Raipur, Chhattisgarh.

... Petitioner(s)

Versus

1 - Smt. Manki Bai W/o Late Lakshman Chandrakar Aged About 72 Years

2 - Santoshi Chandrakar D/o Late Lakshman Chandrakar Aged About 34 Years

Respondents No.1&2 are R/o Village Panchayat Khauli, Tehsil- Arang, District Raipur Chhattisgarh.

3 - Savita Chandrakar D/o Late Lakshman Chandrakar Aged About 32 Years R/o 8/27, Vrindavan B.S.U.P Colony, Saddu, PS- Mowa, Tehsil Arang, District : Raipur, Chhattisgarh

4 - Kaushilya Chandrakar D/o Late Lakshman Chandrakar Aged About 42 Years R/o Village Kharora, Ward No.-1, Tehsil And, District : Mahasamund, Chhattisgarh.

(Note-late Laksham Chandrakar, who was petitioner in MA No.94/2006, expired on 26.04.2008, hence his LRs are named as party as respondents No.1 to 4.)

5 - State of Chhattisgarh Through Collector Raipur Chhattisgarh.

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner	:	Dr. Shiv Kumar Shrivastava, Advocate.
For Respondents 1 to 4	:	Shri Sourabh Gupta, Advocate.
For Respondent/State	:	Shri Siddhant Tiwari, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Order on Board

28.10.2026

1. The present writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner against the order dated 23.03.2015 passed by IVth Additional District Judge, Raipur, in Civil Appeal No.23-A/2004 whereby the appeal filed by the petitioner has been dismissed. The petitioner has also challenged the proceeding of case No.MJC/50/2020 initiated by respondents No.1 to 4 before the VIIth Civil Judge, Class-II, Raipur.

2. The petitioner prayed for following reliefs in the writ petition:

> "10.1 Hon'ble court may kindly be please to allow this writ petition in the fact and circumstances and issue necessary writ to quash registration and proceedings of case no. MJC/50/2022, as instituted by the Respondent 1 to 4, before the learned Trial Court of 7th Civil Judge Class 2, Raipur (Annexure P/1).
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> 10.2 Hon'ble court may kindly be please to allow this writ petition in the fact and circumstances and issue necessary writ to quash order dated 23.03.2015 of learned Appellate Court of 4th Additional District Judge, Raipur, as passed in a Civil Appeal No. 23A/04 (Annexure P/2), titled as Kamal Narayan Verma vs Lakshman Chandrakar and another and direct the said court to decide the case in accordance direction of this Hon'ble Court.
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> 10.3 Any other relief, which may be deemed, fit by this Hon'ble Court just and proper in the facts and circumstances of the case may also be provided in favour of the petitioner."

3. Learned counsel for the petitioner would submit that the respondents No.1 to 4 initiated a proceeding under Section 144 CPC for restitution of possession of their subject land which was obtained by the petitioner in execution of judgment and decree passed by the appellate court dated 24.03.2005. He would submit that the petitioner filed a Civil Suit for declaration of title and permanent injunction over the suit land

situated at Village Charoda, Tehsil and District Raipur against one Lakshman Chandrakar. In the civil suit, the defendant Lakshman Chandrakar remained exparte, however, the said civil suit was dismissed by the trial court vide judgment and decree dated 05.08.2003. Thereafter, the plaintiff filed an appeal before the appellate court which was allowed and judgment and decree has been passed in favour of plaintiff on 24.03.2005. In the appellate court also the defendant Lakshman Chandrakar remained exparte, however, the said Lakshman Chandrakar filed Misc. Appeal No.94 of 2006 before this court challenging the judgment and decree passed by the appellate court. During pendency of said Misc. Appeal, Lakshman Chandrakar died in the year, 2008, however, his death was not informed to this court and got the Misc. Appeal filed by him decided on 26.03.2014 by which the Misc. Appeal was allowed and the matter was remitted back to the appellate court after setting aside the judgment and decree dated 24.03.2005. While remanding the matter back by this court to the appellant court, the parties were directed to remain present before the appellate court on 05.05.2014. It was also directed in the said order that if the parties fail to appear before the appellate court, the appellate court shall issue summons to such party. He would further submit that though the petitioner could not appear before the appellate court on 05.05.2014, but no notice have been issued to him as ordered by this court and he was unaware about the dates of proceeding and ultimately the appeal filed by the petitioner has been dismissed on 23.03.2015 for want of prosecution by the appellate court. After dismissal of appeal for want of prosecution on 23.03.2015 the

respondents No.1 to 4 initiated a proceeding under Section 144 of CPC on 26.09.2022. Since the order passed in Misc. Appeal by this court itself suffers from illegality as before passing order on 26.03.2014 the appellant in the said Misc. Appeal Lakshman Chandrakar had already died in the year, 2008 and therefore the appeal itself was abated, and the matter could not have been remitted by allowing the said appeal. He would also submit that the appellate court should have considered the service of notice upon the parties if they failed to make their appearance. Though the order sheet discloses that notice was ordered to be issued on 23.01.2015, but there is no service report as to whether the said notice was actually served upon the parties or not, yet the appeal has been dismissed for want of prosecution. The petitioner was put in possession in execution of the judgment and decree dated 24.03.2005 passed by the appellate court, therefore, it cannot be said that he has been wrongly put in possession in execution of the decree. The petitioner came to know about decision of appeal only when he received notice of the proceeding initiated by respondents No.1 to 4 under Section 144 of CPC and thereafter the present writ petition has been filed for quashing of entire proceeding initiated by respondents No.1 to 4 and also challenging dismissal of appeal before the appellate court. He would further submit that the petitioner may be provided an opportunity to contest the claim of respondents No.1 to 4 and he is entitled to get his appeal restored for adjudication on its own merits. Therefore, the writ petition may be allowed as claimed by the petitioner.

4. On the other hand, learned counsel for respondents No.1 to 4 oppose the submissions made by the counsel for the petitioner and would

submit that since possession of subject property was delivered pursuant to judgment and decree dated 24.03.2005 passed by the appellate court, however, in the subsequent occasion the judgment and decree passed by the appellate court was set aside by this court in Misc. Appeal No.94 of 2006 vide order dated 26.03.2014 and the appeal filed by the petitioner has been dismissed for want of prosecution, the respondents No.1 to 4 are entitled to get the possession back from petitioner with respect to subject land. The judgment and decree of the appellate court has been reversed in the appeal and there is no final adjudication till date which duly satisfy the requirement of Section 144 of CPC for which the respondents No.1 to 4 are prosecuting before the trial court. Therefore, the proceedings are very much maintainable and it cannot be quashed at threshold. With respect to challenge to the order dated 23.03.2015, the petitioner have an alternative remedy to approach before the competent appellate court to file appropriate application, but in jurisdiction under Article 227 of the Constitution of India, the impugned order dated 23.03.2015 cannot be interfered with as there is no illegality or jurisdictional error in passing such order. When there was specific direction to appear in the proceeding on 05.05.2014 and petitioner failed to appear, the appellate court issued notice to the parties on 23.01.2015 and when the appellant failed to appear, his appeal has been dismissed for want of prosecution. Therefore, there is no merit in the present writ petition on both these challenges and the same is liable to be dismissed.

5. I have heard the counsel for the parties and perused the documents annexed with the petition.

6. From perusal of documents annexed with the writ petition and after having considered the rival contentions put forth by the counsel for the parties, the sequence of events appear to be undisputed that the petitioner filed a Civil Suit for declaration of title and permanent injunction before the trial court in which the defendant Lakshman Chandrakar remained exparte. The suit was dismissed on merits vide judgment and decree dated 05.08.2003 and thereafter the plaintiff filed an appeal before the appellate court in which the judgment and decree has been passed on 24.03.2005. In the appeal before the appellate court, the defendant Lakshman Chandrakar remained exparte and it was an exparte judgment and decree passed by the appellate court. The defendant Lakshman Chandrakar challenged the said judgment and decree dated 24.03.2005 before this court by filing Misc. Appeal No.94 of 2006 which was ultimately decided on 26.03.2014 by which the matter was remitted back to the appellate court for deciding the appeal afresh after providing opportunity to appellant Lakshman Chandrakar and directed the parties to remain present before the appellate court on 05.05.2014, failing which the appellate court was directed to issue notice to the concerned parties. Thereafter, the appellate court issued notice to the parties on 23.01.2015 and ultimately dismissed the appeal filed by the petitioner vide order dated 23.03.2015 for want of prosecution. It is also not in dispute that after dismissal of appeal on 23.03.2015 by the appellant court, the respondents No.1 to 4 filed their application under Section 144 of CPC on 26.09.2022 before the trial court which is pending there.

7. The two fold challenges of the petitioner in the present writ petition is the order dated 23.03.2015 passed by the appellate court by which the appeal has been dismissed for want of prosecution and secondly the proceeding initiated by the respondents No.1 to 4 under Section 144 of CPC before the trial court.

8. With respect to challenge to order dated 23.03.2015 passed by the appellate court is concerned, remedy is provided under Order 41 Rule 19 of CPC to get the appeal restored which was dismissed for want of prosecution. Order 41 Rule 19 CPC reads as under:

> "**19. Re-admission of appeal dismissed for default.—**Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit."

9. While considering the application filed under Order 41 Rule 19 of CPC, if any, the appellate court is required to consider the cause shown by the appellant that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing. Since the appellant/petitioner had not approached before the appellate court for re-admission of the appeal which was dismissed in default, this court cannot examine the validity of the order that it suffers from any jurisdictional error or perversity. Order 41 Rule 17 of CPC clearly provides that if on the day fixed for hearing of the appeal, the appellant does not appear when the matte was called on for hearing, the appeal may be dismissed, which has rightly been done by the appellate court.

If the appellant seeks restoration of his appeal, he may make an application before there to get the appeal restored under the provisions of Order 41 Rule 19 CPC.

10. So far as the other ground raised by the petitioner that proceeding of Section 144 CPC is not maintainable is concerned, it is necessary here to notice the provisions of Section 144 CPC which reads as under:

> "144. Application for restitution- **(1)** Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.
>
> **Explanation.—** For the purposes of sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include,—
>
> **(a)** where the decree or order has been varied or reversed in exercise of appellate or revision jurisdiction, the Court of first instance;
>
> **(b)** where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;
>
> **(c)** where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for

restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)"

11. The petitioner could not dispute that in execution of judgment and decree dated 24.03.2005 the possession of suit property was delivered to him, however, the said judgment and decree has been set aside by this court vide order dated 26.03.2014 in Misc. Appeal No.94 of 2006. The order passed in Misc. Appeal has not been challenged by the petitioner in any other forum or even the petitioner had not filed any application for review on the ground that appellant Lakshman Chandrakar already died much before adjudication of the appeal and therefore the order could not have been passed on merits. None of the parties informed about death of Lakshman Chandrakar before this court in Misc. Appeal No.94 of 2006 and therefore it cannot be said that the order dated 26.03.2014 passed in Misc. Appeal No.94 of 2006 suffers from any illegality.

12. Further, Section 144 of CPC provides that if the decree is reversed or varied in any appeal or other proceeding, the court which passes the decree shall, on an application of the parties entitled thereto, by way of restitution of otherwise, cause such restitution to be made so far as may be, place the parties in the position which they would have occupied. The respondents No.1 to 4, on the ground that the decree through which the possession of the suit property was delivered to the petitioner, has been set aside by the appellate court and there is no adjudication further in favour of the plaintiff, the possession of the suit

property may be restituted in their favour for which they are prosecuting their application before the trial court, in which I do not find any illegality or perversity to interfere in the proceeding initiated by respondents No.1 to 4 under Section 144 of CPC.

13. Thus, considering the entire surrounding facts and circumstances of the case and documents available in the writ petition, this court does not find any jurisdictional error, illegality or perversity in the impugned order dated 23.03.2015 passed by the appellate court or in the proceeding initiated by the respondents No.1 to 4 under Section 144 CPC before the trial court.

14. The writ petition fails and is hereby dismissed.

Sd/-
(Ravindra Kumar Agrawal)
Judge

inder