MHNG150004922023

Presented on : 15.02.2023
Registered on : 15.02.2023
Decided on : 28.04.2026
Duration : 3 Y. 2M.13D

IN THE COURT OF JT. CIVIL JUDGE, (J.D.), HINGNA, DIST. NAGPUR

(PRESIDED OVER BY V. I. SHAIKH)

Exh. No. 28 M.J.C. No.19/2023

1] **Smt. Durga Babansingh Shandilya,**
Age : Major, Occupation- Agriculturist,

2] **Pankajsingh Babansingh Shandilya,**
Age : 19 Years, Occupation- Student,

3] **Master Golu Babansingh Shandilya,**
Since minor through natural guardian
Smt. Durga wd/o Babansingh Shandilya

All 1 to 3 R/o. Post Sawangi Asola,
Tah. Hingna, Dist. Nagpur.

4] **Suraj Devisingh Shandilya ,**
Age : 43 Years, Occupation- Agriculturist,
c/o. Shri Bhalekar, Sakat Nagar,
Ring Road, Nagpur.

5] **Jiwan Devisingh Shandilya,**
Age : 27 Years, Occupation- Agriculturist,
c/o. Shri Bhalekar, Sakat Nagar,
Ring Road, Nagpur.

6] **Usha Devisingh Shandilya,**
(Usha Deepak Sakkarwar)
Age : 29 Years, Occupation- Housewife,
R/o. Butibori Nagpur.

7] **Usha Nepalsingh Shandilya,**
Age :48 Years, Occupation- Agriculturist,

8] **Dhanraj Nepalsingh Shandilya,**
Age : 25 Years, Occupation- Agriculturist,

9] **Bhojraj Nepalsingh Shandilya,**
Age : 24 Years, Occupation- Agriculturist,

10] **Himmat Nepalsingh Shandilya,**
Age : 21 Years, Occupation- Agriculturist,

Applicant no. 8 to 10 R/o. Post Sawangi Asola,
Tah. Hingna, Dist. Nagpur.

11] **Raju Hanumansingh Shandilya,**
Age : 58 Years, Occupation- Agriculturist,
R/o. Wathoda, Nagpur.

12] **Altaf Khan Asad Khan,**
Age : 34 Years, Occupation- Business,
R/o. Bhaldarpura, Near Badi Masjid, Nagpur.

..**Applicants**

Versus

Tavindersingh Mohindarsingh Rawal,

Age : 44 Years, Occupation- Business,

R/o. Bezonbag Saw Mill Area, Nagpur.

..**Opponent**

Claim :- For Restoration of Regular Civil Suit No. 49/2013.

Appearance :-

Learned Advocate For Applicant : Shri Dhiraj Lamsonge

Learned Advocate For Opponent : Shri A.S. Mehadiya.

JUDGMENT

(Delivered on 02.05.2026)

1] The present proceeding has been filed by the applicants seeking the restoration of Regular Civil Suit No. 49 of 2013 to its original position which was dismissed for want of prosecution.

2] The applicants had filed a suit for declaration and permanent injunction. They claim they attended the court dates regularly through their lawyer. On 09.01.2023, the case was listed for hearing an application and a counter claim. The applicants and their lawyer could not attend court that day due to unavoidable reasons. The court subsequently passed an order dismissing the suit for their absence.

3] The applicants further contended that they have a strong case and will likely succeed on the merits. The suit must be restored to prevent irreparable loss of their property. Hence they prayed for setting aside the dismissal order dated 09.01.2023. They further prayed for the restoration of Regular Civil Suit no. 49 of 2013 to its original file.

4] The non-applicant filed reply at Exh.11. It is contended that the suit was actually dismissed for want of prosecution on 15.04.2019, and not on 09.01.2023, as claimed by the applicants. On the latter date, the

court had merely permitted the non-applicant to withdraw a counter claim. This discrepancy shows the applicants were not even aware of the correct dismissal date of their own suit.

5] The non-applicant points out that the application is filed against only one defendant, even though the original suit had two. Furthermore, the application is filed nearly four years after the actual dismissal, making it heavily barred by limitation. There is no accompanying application to condone this significant delay. These procedural failures reflect a total lack of seriousness in prosecuting the matter.

6] The reply further states that three of the applicants mentioned in the restoration plea are deceased. The power of attorney relied upon has also become redundant due to the death of several executants. Applicant number four filed this plea alone without proper authorization from the other remaining applicants. These facts suggest that the application was filed in a casual and improper manner.

7] The non-applicant highlights that the applicants were attending other criminal proceedings in the same court on the same dates but ignored the civil suit. A previous court finding established that the applicants were not the owners of the property, and this finding was never challenged. Based on these points, the non-applicant requests to reject the restoration application with heavy costs.

8] Heard Advocates for applicant and the opponents. Also gone through the written notes of argument filed by the applicants at Exhibit no.27.

9] I have formulated the following points for determination and consideration and answered the same for the reasons to follow:

Sr. No.	Points	Findings
1	Whether the applicants have made out sufficient cause for their non appearance before the court to restore the suit to file ?	No
2	Whether the applicants have made out grounds to restore suit to file ?	No
3	What order ?	Application stands rejected.

R E A S O N S

10] The applicants have filed on record his affidavit in lieu of chief examination of applicant no.1 4 Suraj Shandilya (Exh.16). They have also filed on record copy of power of attorney at Exh.19, web copy of order dated 09.01.2022 dated 09.01.2022.

11] On the other hand opponent has not lead any oral. However he has filed on record the certified copies of application and order in M.C.A No. 62/2021 at Exh,22 and 23 respectively.

Point Nos. 1 to 3 :

12] In the instant matter, it is an admitted position that the suit stood dismissed owing to the applicant's default of appearance. Consequently, the onus lies upon the applicant to establish satisfaction of the essential conditions stipulated under Order IX, Rule 4 of the Code of Civil Procedure, 1908.

13] In this regard, Mr. Suraj Shandilya has deposed that he is acting as the applicant no.4 and power of attorney holder for other applicants. He testified that he has been diligent in attending the court proceedings. He asserts that his failure to appear on 09.01.2023, was due to unavoidable circumstances and a bona fide mistake. This absence led the court to dismiss the suit while it was listed for hearing an application and a counter claim.

14] The witness further deposed that the applicants have a strong legal case regarding their ancestral agricultural land located at Mouza Aasola. He states that the suit property is of great importance and the applicants will suffer irreparable loss if the case is not heard. He refers to the details already provided in the original plaint to support the merits of the claim. He contends that restoring the suit will not cause any unfair prejudice to the defendant as the matter can then be decided on its actual merits.

15] He also deposed that there are ongoing criminal disputes between the parties which are currently being challenged before the High Court. The witness clarifies that he is authorized to represent the other applicants in these proceedings. He provides a formal undertaking to the court that he will attend every future hearing without fail. He concludes by requesting to recall the dismissal order and restore the suit to its original position.

16] During cross-examination the witness admitted that the original suit was filed based on a Power of Attorney (Exhibit 19) given by Anjanabai. He acknowledged that Anjanabai, Pankaj, Vimal, Nepalsingh, and Raju are all deceased. The witness conceded that he

has not filed any other Power of Attorney in this case. He further admitted that the document on record does not explicitly state it was given on behalf of all the current applicants. He could not produce any documentary evidence to show that applicants seven to ten authorized him to act for them.

17] The witness denied that his original name is Suresh Devisingh Bais or that he was born in Anjansara. When asked about the suit dismissal on 15.04.2019, he explained that the suit was dismissed because he was in jail on false charges and could not file the necessary applications. However, he admitted that he has not submitted any jail records or documents to prove the duration or dates of his imprisonment. He also confirmed that he did not file an application to condone the delay for this restoration plea, nor did he explain the specific cause of delay within the main application.

18] He admitted to filing a separate case for death certificates in the same court where the civil suit was pending. While he claimed his sister was a co-applicant in that matter, he was confronted with certified copies of the case records (Exhibits 22 and 23). The witness claimed he does not remember the exact date the suit was dismissed. He admitted that the orders he did file are dated 09.01.2022, and were passed on specific procedural applications rather than the final dismissal of the suit itself. Finally, the witness denied the suggestion that he lacks the authority to represent all the applicants.

19] The learned advocate for the applicant has argued that Regular Civil Suit no. 49/2013 was being prosecuted diligently until the hearing on 09.01.2023. On that specific date, both the plaintiffs and their legal

counsel were unable to appear due to unavoidable circumstances. This absence led the court to dismiss the suit for default.

20] It is further argued by the applicant s that they have a strong prima facie case and a high probability of success on the merits. The subject matter involves a rightful claim to property, and if the suit is not restored, they will suffer irreparable financial and legal loss. Hence, the interests of justice require the court to exercise its discretionary powers to bring the case back to its original file.

21] To determine whether the applicants have made out a sufficient cause for their non-appearance and provided grounds for restoration, we must analyze the consistency of their pleadings against the evidence recorded. As a member of the judiciary, I provide the following reasoning based on the legal standards of the Code of Civil Procedure and relevant judicial precedents.

22] On the other hand the learned advocate for the respondent has argued that the applicant has failed to prove a bona fide reason for the long-term absence and failed to correct the procedural infirmities regarding deceased parties. They have also failed to make out sufficient grounds to restore the suit. Hence application deserves to be rejected.

23] At the outset it is important to note that the applicants claim they could not appear on 09.01.2023, due to "unavoidable circumstances." However, the non-applicant has demonstrated through court records that the suit was actually dismissed much earlier, on 15.04.2019. The law regarding "sufficient cause" requires a party to explain every day of the delay, especially when the delay is as significant as four years.

24] Further, the witness, Suraj Shandilya, admitted in his cross-examination that he was in jail during the dismissal. While imprisonment can constitute a sufficient cause, the witness failed to produce any jail warrants, release certificates, or case numbers to substantiate this claim. In the absence of documentary evidence, a mere oral statement is insufficient to override the negligence of a four-year delay.

25] Moreover, there is a fundamental factual error in the applicants' plea. They seek to set aside an order dated 09.01.2023, but the record shows the suit was dismissed for want of prosecution in 2019. The order from 2023 actually pertained to the non-applicant's counter-claim. A suit that is already dismissed cannot be "dismissed again" years later.

26] This discrepancy indicates a lack of due diligence. A litigant who is not aware of the status of their own proceedings for years cannot claim the benefit of "bona fide mistake." Hence it is evident that the applicants failed to track the progress of the suit, which is a primary duty of a litigant.

27] The cross-examination revealed that several original applicants are deceased. The Power of Attorney (Exhibit 19) used to file the restoration application was executed by Anjanabai, who is also dead. Legally, a Power of Attorney stands revoked upon the death of the principal. Further, the applicant no.4 filed the application without fresh authorization from the legal heirs of the deceased parties. He also could not prove that he represents applicants no.7 to 10. A restoration application filed by an unauthorized person on behalf of dead litigants

is technically flawed and cannot be considered a valid ground for restoration.

28] The evidence shows that while the applicants claimed they could not attend the civil suit, they were actively attending criminal proceedings (Misc. Criminal Application 62/2021) in the very same court complex during the period the suit remained dismissed. If a party is present in court for one matter but neglects another, it suggests a deliberate inaction rather than a sufficient cause. This selective participation in legal proceedings demonstrates that the non-appearance was not accidental but was a result of gross negligence.

29] The applicants argued that they have a strong case involving ancestral land. While courts generally prefer to decide cases on merits rather than technicalities, the law of limitation cannot be ignored. The applicants filed this restoration plea nearly four years late without an application for condonation of delay. Without a formal prayer to condone the delay under Section 5 of the Limitation Act, the court lacks the jurisdiction to entertain the restoration plea. Since the applicants failed to prove a bona fide reason for the long-term absence and failed to correct the procedural infirmities regarding deceased parties, they have failed to make out sufficient grounds to restore the suit.

30] In view of the discussion made above and reasons stated therein, I am of the opinion that applicants have not made out grounds to restore R.C.S. No. 49/2013. Hence, I answer the point Nos. 1 and 2 in the negative and I proceed to pass following order to answer point no.3.

O R D E R

Application stands rejected.

Digitally signed by SHAIKH VASIM ISAMIYA
Date: 2026.05.02 16:46:10 +0530

Hingna [V. I. Shaikh]
Date : 02.05.2026 Jt. Civil Judge Jr. Div. Hingna