

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 1653/2017

- 1 Lallu Ram S/o Shri Govind Narayan, R/o Village Toda Bhata, Tehsil Bassi, District Jaipur, Rajasthan, (Since Deceased) Through Legal Representatives.
- 1.1 Bhori Devi W/o Lallu Ram, Aged About 62 Years, R/o Rab Mohalla, Toda Bhata, Jaipur-303301
- 1.2 Dilip Kumar Sharma S/o Lallu Ram, Aged About 39 Years, R/o 57, Ram Mohalla, Toda Bhata, Jaipur-303301.
- 1.3 Sonu Kumar Jangid S/o Lallu Ram, Aged About 32 Years, R/o Toda Bhata, Toda Bhata, Jaipur-303301 (Raj).
- 1.4 Neha Jangid W/o Jitendra Jangid D/o Lallu Ram, Aged About 43 Years, R/o 19, Shanti Nagar, Dadi Ka Phatak, Vikas School, Benar Road, Jhotwara, Jaipur-302012
- 1.5 Lalita Jangid W/o Dinesh Jangid D/o Lallu Ram, Aged About 40 Years, R/o 19, Shanti Nagar, Dadi Ka Phatak, Vikas School, Benar Road, Jhotwara, Jaipur-302012
- 1.6 Anita Jangid W/o Vishnu Jangid D/o Lallu Ram, Aged About 33 Years, R/o 94,95, Shiv Path, Prahlad Colony, Sanganer, Jaipur-302029.

-----Petitioners

Versus

- 1 Sukha S/o Shri Parsa, Aged About 70 Years, (Dead During Suit)
- 2 Chotu S/o Shri Parsa, Aged About 60 Years, (Dead)
- 2.1 Gyarsi, Widow Of Chotu Ram, Resident Of Khijuria, Tehsil Chaksu, Dist. Jaipur (Deceased)
- 2.2 Mooli D/o Chotu Ram W/o Jagdish Jat, Resident Of Village Kacholiya, Tehsil Bassi, Dist. Jaipur.
- 3 Lallu, S/o Chootu
- 4 Ramkalyan S/o Chootu, Resident Of Khijuria Tiwadiyan, Tehsil Bassi, District, Jaipur.
- 5 Nathu S/o Shri Parsa, Resident Of Futolaav, Tehsil Jamwa Ramgad, Dist. Jaipur (Dead During Suit)

----Respondents/Plaintiffs

For Petitioner(s) : Mr. Vikas Jain

For Respondent(s) : Mr. Vipul Jain

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment / Order

27/03/2026

1. The present writ petition has been filed assailing the order dated 03.09.2016, passed by learned Additional District and Sessions Judge, No.2, Jaipur, District Jaipur, in Restoration Application No.75/2013, whereby the application filed by the petitioners under Order 9 Rule 9 CPC and Section 5 of the Limitation Act, 1963 for restoration of the application filed under Order 9 Rule 13 CPC, has been dismissed.
2. Brief facts of the case are that a suit for declaration and permanent injunction was filed which came to be decreed *ex-parte* vide judgment and decree dated 22.07.1999. The petitioners thereafter filed an application under Order 9 Rule 13 CPC for setting aside the judgment and decree dated 22.07.1999.
3. The said application filed under Order 9 Rule 13 CPC was dismissed vide order dated 21.03.2013, in absence of the applicants. The applicants-petitioners thereafter filed an application under Order 9 Rule 9 CPC on 05.09.2013. The said application for restoration of the application filed under Order 9 Rule 13 CPC was kept pending for almost three years and subsequently, the said application was dismissed vide order dated 03.09.2016.
4. Learned counsel for the petitioners submits that the petitioners were seriously pursuing his remedy against the judgment and decree and was not negligent. However, the counsel appearing before the learned Court below could not remain present on 21.03.2013. Therefore, the application for setting aside the judgment and decree under Order 9 Rule 13 CPC was rejected.
5. Learned counsel for the petitioners further submits that the counsel appearing before the learned Court below never informed

about the rejection of the application in default and when it came to the notice of the petitioners, they immediately filed an application under Order 9 Rule 9 CPC for restoration of the application filed under Order 9 Rule 13 CPC.

6. Learned counsel for the petitioners further submits that the learned Trial Court ought to have taken a lenient view while deciding the restoration application. He submits that he is ready and willing to pay the costs which this Court deems appropriate.

7. Per contra, learned counsel for the respondents submits that the petitioners were through out negligent in contesting the case and were not even present during the suit proceedings. Therefore, the *ex-parte* judgment and decree was passed, and the same has been challenged by way of application filed under Order 9 Rule 13 CPC in the year 2006. Furthermore, the application was not diligently pursued by the petitioners. Thereafter, it was dismissed in default on 21.03.2013. He thus, submits that the order impugned does not require any interference of this Court.

8. Heard and perused the material available on record.

9. Looking to the fact that the application under Order 9 Rule 9 CPC has been rejected which was filed at the earliest possible time, this Court finds that a person should not be rendered without remedy, merely on account of the fact of default and the Court should take a lenient view while deciding the application under Order 9 Rule 9 CPC.

10. Considering the facts and circumstances of the present case and without commenting on the conduct of the petitioners, the impugned order dated 03.09.2016 is hereby quashed and set aside. The restoration application under Order 9 Rule 9 CPC dated

05.09.2013 stands allowed, subject to payment of costs of Rs.50,000/- which shall be paid to the respondents-plaintiffs.

11. It is also made clear that merely allowing of the application filed under Order 9 Rule 9 CPC shall not influence the learned Trial Court while deciding the application filed under Order 9 Rule 13 CPC.

12. With the above observations, the present Civil Writ Petition stands disposed of.

13. Pending application(s), if any, also stand disposed of.

(BIPIN GUPTA),J