

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 731 OF 2014
(Arising out of S.L.P.(C) No. 20091 of 2013)

HANSABAI & ANR. ... APPELLANT(S)

VERSUS

GOPAL & ORS. ...RESPONDENT(S)

O R D E R

The petitioners have filed this petition assailing the Order dated 15.03.2013 passed by the Madhya Pradesh High Court in Misc. Appeal No.1949 of 2012 whereby the High Court had set aside the ex-parte decree on payment of cost.

Leave granted.

Short facts giving rise to the present appeal are that against an ex-parte decree, the judgment-debtors filed an application under Order IX Rule 13 of the Code of Civil Procedure ("CPC" for short) for setting aside the same. The said petition was dismissed for default by an Order dated 17.10.2006. After five years, an application was filed for restoration of the said application which was dismissed. Against the said order, the judgment-debtors preferred an appeal and the High Court by the impugned Order had set aside the ex-parte decree itself.

Respondents have been served and Vakalatnama on their behalf has been filed by Mr. Kedar Nath Tripathy. However, when the matter is taken up he pleads no instructions and withdraws from the case. This may be noted.

Learned counsel for the appellants submits that on appeal the best the High Court could have done was to restore the application for restoration of the application filed for setting aside the ex-parte decree and could not have set aside the ex-parte decree itself. He submits that it is against the refusal of the restoration application that the appeal was filed and there being no adjudication on merits as regards the validity of the ex-parte decree, the High Court ought not to have set aside the same.

We find substance in the submission of learned counsel for the appellants. Accordingly, we set aside that portion of the order of the High Court by which it had set aside the ex-parte decree and restore the application filed by the judgment-debtors for restoration of the application which they have filed for restoring the application under Order IX Rule 13 of the CPC.

In the result, we allow this appeal with the aforesaid directions.

There shall be no order as to costs.

.....J.
(CHANDRAMAULI KR. PRASAD)

.....J.
(PINAKI CHANDRA GHOSE)

New Delhi;
January 20, 2014

ITEM NO.6 COURT NO.9 SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).20091/2013

(From the judgement and order dated 15/03/2013 in MA No.1949/2012 of The HIGH COURT OF M.P AT INDORE)

HANSABAI & ANR. Petitioner(s)

VERSUS

GOPAL & ORS. Respondent(s)

(With appln(s) for stay, exemption from filing O.T. and prayer for interim relief)

Date: 20/01/2014 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Petitioner(s) Mr. Niraj Sharma,Adv.

For Respondent(s) Mr. Kedar Nath Tripathy,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeal is allowed in terms of the signed order.

	(S. K. Rakheja)	Court		(Indu Satija)	
	Master		Assistant Registrar		

(Signed order is placed on the file)