
(2025) 05 JH CK 1160
In the Jharkhand High Court
Case No : C.M.P. No. 91 Of 2025

Upendra Prasad Gupta

APPELLANT

Vs

Satendra Kumar Gupta

RESPONDENT

Date of Decision : 07-05-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 9 Rule 3, Order 9 Rule 4, Order 17 Rule 2
Specific Relief Act, 1963 — Section 31

Citation : (2025) 05 JH CK 1160

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Anand Kumar Pandey, Baban Prasad

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Mr. Anand Kumar Pandey, learned counsel appearing for the petitioner and Mr. Baban Prasad, learned counsel appearing for opposite party nos. 1 and 2.

2. This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 08.07.2024 passed by the learned Civil Judge (Sr. Division)-III, Palamau in Civil Misc. Case No.10 of 2024, whereby, the restoration petition dated 20.02.2024 filed by the plaintiffs/opposite parties under Order IX Rule 4 read with Section 151 of the CPC for restoration of Original Suit No.68 of 2017 has been allowed without providing any opportunity to the petitioner.

3. Mr. Anand Kumar Pandey, learned counsel appearing for the petitioner submits that the plaintiffs/opposite parties instituted a suit being Original Suit No.68 of 2017 for declaration that three sale deeds do not contain true expression of conscious mind of Late Ayodhya Prasad and the said sale deeds were obtained by playing fraud and the same did not convey right, title, interest and possession upon the defendants, which are liable to be cancelled under Section 31 of

Specific Relief Act and also for permanent injunction. He further submits that after receiving summons, the petitioner/defendant has appeared in the said suit and filed written statement and contested the suit on several grounds. He also submits that after framing issues, the suit was fixed for evidence, however, despite several adjournments the plaintiffs/ opposite parties did not take any step and ultimately vide order dated 20.03.2023, the said suit was dismissed under Order IX Rule 3 read with Order XVII Rule 2 of the CPC. He then submits that on 20.02.2024, the plaintiffs/opposite parties filed a restoration petition under Order IX Rule 4 read with Section 151 of the CPC for restoration of the said suit, which was registered as Civil Misc. Case No.10 of 2024 and vide order dated 08.07.2024, the learned Court has been pleased to restore the said original suit to its original file. He submits that this exercise has been done by the learned Court without noticing the defendant and even copy of the restoration petition was not served upon him. He submits that in view of that, the learned Court has wrongly passed the said order and, as such, the impugned order may kindly be set-aside.

4. Mr. Baban Prasad, learned counsel appearing for opposite party nos. 1 and 2 submits that it is within the domain of the learned Court to satisfy to restore the said suit and no notice is required to be issued. To buttress this argument, he relied upon the judgment passed by a Coordinate Bench of this Court in the case of Anwari Begum & others v. State of Bihar (Now Jharkhand) and others, reported in 2011 (2) JCR 215 (Jhr). Relying on the above judgment, he submits that no notice is required to be issued. On the same line, he further relied upon the judgment passed by the Orissa High Court in the case of Binod Kumar Agarwala and another v. Mst. Satyabhama Debi, reported in AIR 1988 Orissa 44 as well as the judgment passed by the Division Bench of Allahabad High Court in the case of Laljit Singh and others v. Pyarelal and others, reported in AIR 1956 Allahabad 714. Relying on the above judgments, he submits that the learned Court has rightly passed the order and, as such, this petition may kindly be dismissed.

5. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record and finds that it is an admitted position that the Original Suit No.68 of 2017 was instituted by the plaintiffs/ opposite parties, which was fixed for evidence after framing issues, however, opposite parties did not take any steps despite several adjournments and, as such, the said suit was dismissed vide order dated 20. 03.2023. Thereafter, the restoration petition being Civil Misc. Case No.10 of 2024 was filed by the opposite parties under Order IX Rule 4 read with Section 151 of the CPC and the learned Court has been pleased to allow the said restoration petition vide order dated 08.07.2024 without issuing notice to the petitioner/defendant. It is not denied by the learned counsel for the opposite parties that the copy of the said restoration petition was not served upon the defendant and it has also not been denied that the notice was not issued to the defendant. Thus, it is an admitted position that notice upon defendant/ petitioner has not been issued in the said

restoration petition.

6. The question remains as to whether notice in such exercise is necessary in light of Order IX Rule 4 of the CPC or not? Admittedly, the defendant has appeared and filed his written statement and in spite of that, no notice has been issued upon him while restoring the said original suit.

7. For the proposition that restoring a suit, no notice is required, reliance has been placed by the learned counsel for the opposite party nos. 1 and 2 in the cases of *Anwari Begum & others v. State of Bihar (Now Jharkhand) and others*, *Binod Kumar Agarwala and another v. Mst. Satyabhama Debi and Laljit Singh and others v. Pyarelal and others (supra)*. In those cases, it was held that when the suit is dismissed under Order IX Rule 3 of the CPC for non-appearance of both the parties, the Court has jurisdictional power to restore the suit if sufficient case is shown for non-appearance. As may be noted, Order IX Rule 3 of the CPC comes into place only when both the parties are absent. In such a case subject to limitation, the plaintiff can institute a fresh suit or apply for setting aside by showing sufficient cause for non-appearance. The facts therein would show that the suit was kept for evidence of the plaintiff. To a similar effect is the judgment in the case of *Babu v. Dewan Singh and others*, reported in AIR 1952 All 749. Again it has been pointed out that it is on the case when the suit is dismissed under Order IX Rule 3 of the CPC when both the parties were absent. In the case of *R.R. Khatik & others v. Sahadeo Gopala Koshti & others*, reported in AIR (32) 1945 Nagpur 185, the learned Single Judge of Nagpur High Court has held that if a suit is restored under Order IX, Rule 4 without notice to the defendant, the same would be bad as defendant must be given notice of the hearing of the suit. Similar view is taken by a Division Bench of the Allahabad High Court in the case of *Long Life Carpet Industries v. Smt. Kesar Jahan*, reported in AIR 1988 All. 55 when the Division Bench noted that notice must be given to the defendants.

8. The provisions of Rule 4 of Order IX of the CPC would be attracted in a case where suit is dismissed under Rule 2 or Rule 3. From careful perusal of the order dismissing the suit for non-prosecution, it is abundantly clear that the defendant was present when such order was passed by way of filing representation. The Rule 2 or 3 has no application in the instant case. Therefore, the conclusion reached by the learned trial Court that where a suit is dismissed under Rule 2 or Rule 3, it can be restored and Order IX Rule 4 of the CPC does not require hearing the other side in the proceedings of present nature, is misconceived. When application is filed for restoration of suit by the original plaintiffs for restoration of the suit, it was necessary for the concerned Court to issue notices to the defendants/non applicants therein and after hearing them to pass necessary orders on the application for restoration petition as representation on behalf of the defendant was there before the learned Court and it has not been denied by the learned counsel for the opposite parties/plaintiffs. In these backgrounds, the judgments relied by the learned counsel for the opposite parties are distinguishable. Further, the judgment of the Coordinate Bench of this

Court is per inquirium in light of the judgment of the Division Bench of Allahabad High Court, as noted hereinabove and, as such, those judgments relied by the learned counsel for the opposite parties are not helping the opposite parties/plaintiffs.

9. In view of the above facts, reasons and analysis, this C.M.P. is succeeded. Accordingly, the order dated 08.07.2024 passed by the learned Civil Judge (Sr. Division)-III, Palamau in Civil Misc. Case No.10 of 2024 arising out of Original Suit No.68 of 2017 is, hereby, set-aside.

10. The petition filed for restoration is restored to the file of the learned Court, who will decide the same and pass a fresh order, in accordance with law after providing opportunity of hearing to all the parties.

11. The petitioner and opposite parties appearing herein in the present C.M.P. shall remain present before the learned Court on 16.06.2025.

12. In view of this order, no fresh notice is required to be issued upon the petitioner/defendant and opposite parties/plaintiffs.

13. Accordingly, this petition is allowed in above terms and disposed of.

14. Interim order, if any granted by this Court, is vacated.