NEUTRAL CITATION NO. 2026:MPHC-IND:30719 VERDICTUM.IN

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANDEEP N. BHATT

ON THE 30th OF OCTOBER, 2026

MISC. PETITION No. 5926 of 2026

CNR No.: MPHC020383312026

KU. JYOTI SINGH

Versus

CHETAN LASHKARI

Appearance:

Shri Raghvendra Singh Raghuvanshi - Advocate for the petitioner.

Shri Govind Rai Purohit - Advocate for the respondent.

ORDER

The present petition has been filed by the petitioner under Article 227 of the Constitution of India praying for the following reliefs :-

> *"(a) Call for the record of Civil Suit No. RCSA/922/2021, titled "Chetan Lashkari Vs. Ku. Jyoti Singh", pending before the Court of the Civil Judge, Senior Division, Indore (M.P.);*
>
> *(b) Set aside the impugned orders dated 16.02.2026 and dated 01.09.2026 passed by the trial court and set aside the ex-parte proceedings dated 23.09.2025 recorded against the Petitioner, and permit her to proceed bi parte in the suit at the same stage as on 23.09.2025 by allowing her to file written statement etc. and to contest the suit on merits.*
>
> *(c) Award costs of this petition in favour of the Petitioner; and*
>
> *(d) Pass such other and further order(s)/relief(s) in favour of petitioner as this Hon'ble Court may deem just and proper in the facts and circumstances of the case."*

Heard counsel for the parties.

02. Learned counsel for the petitioner has submitted that the petitioner is residing at Chandigarh (UT) and has engaged an Advocate on an earlier

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occasion namely, Rohit Dubey. Learned counsel by drawing the attention of this Court towards the WhatsApp chat has stated at the bar that the petitioner who is residing at Chandigarh and constantly enquiring about the matter with earlier Advocate who was appearing at Indore. In view of the WhatsApp chat, the answers are given to the present petitioner by the Advocate regarding such enquiry and on relying on such answers, petitioner has not inquired further in the matter and thereafter, in view of ex-parte, the impugned order is passed for non-appearance of the petitioner or his counsel. It is further contended that due to the negligence on part of the Advocate, litigant should not suffer. In support of this contention, learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Rafiq and Another Vs. Munshilal and Another*** reported in ***AIR 1981 (2) SCC 788***, wherein the Hon'ble Supreme Court has observed as under:-

> *"3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the*

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party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs 200 should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr A.K. Sanghi."

03. He has further relied on the judgment passed in the case of ***Malkiat Singh and Another Vs. Joginder Singh and Others*** reported in ***1998 (2) SCC 206*** which reads as under:-

"3. The appellants went to enquire about the proceedings in the case from their counsel. On 6-6-1992, on their enquiry, their counsel informed them that he had pleaded "no instructions" as a result of which they were proceeded ex parte and the suit had been decreed ex parte on 8-2-1992. The appellants then engaged another counsel and on 10-6-1992, filed an application under Order 9 Rule 13 CPC for setting aside the order dated 18-11-1991 and the ex parte judgment and decree dated 8-2-1992. While that application was pending adjudication, the appeal filed by the appellants against their conviction and sentence was heard by this Court. On 7-3-1995, the order of conviction and sentence was set aside.

4. The trial court dismissed the application filed by the appellants under Order 9 Rule 13 CPC on 22-1-1996. Their appeal failed before the learned District Judge on 18-10-1996. The High Court dismissed the civil revision petition filed by them in limine on 13-12-1996. Hence this appeal by special leave.

7. The appellants in their application clearly pleaded that they were neither careless nor negligent and as soon as they learnt about the ex parte decree dated 8-2-1992 and the order dated 18-11-1991, they filed the application to set aside the order and ex parte decree. A perusal of the record also reveals that the appellants were neither careless nor negligent in defending the suit. They had engaged a counsel and were following the proceedings. In this fact situation, the trial court, which had admittedly not issued any notice to the appellants after their counsel had reported no instructions, should have, in the interest of justice, allowed that application and proceeded in the case from the stage when the counsel reported no instructions. The appellants cannot, in the facts and circumstances of the case, be said to be at fault and they should not

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suffer. In taking this view, we are fortified by a judgment of this Court in Tahil Ram Issardas Sadarangani v. Ramchand Issardas Sadarangani [1993 Supp (3) SCC 256] wherein the Bench opined:

> *"4. It is not disputed in the present case that on 15-3-1974 when Mr Adhia, Advocate withdrew from the case, the petitioners were not present in court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on that day. We are of the view, when Mr Adhia withdrew from the case, the interests of justice required, that a fresh notice for actual date of hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer."*

04. Learned counsel for the petitioner has further submitted that on the very first date of filing appearance, the concerned Advocate has given no objection for granting status quo order, which itself speaks about the conduct of the earlier Advocate and thereafter, when the petitioner came to know about the impugned order, she has changed the Advocate and thereafter filed the present petition by challenging the said order. Therefore, learned counsel prays that the appropriate order may be passed by setting aside the impugned order and granting further relief in favour of the petitioner.

05. Counsel for the respondents has strongly opposed the submissions made on behalf of the petitioner by submitting that earlier also one opportunity had already been granted to the petitioner, however, petitioner has not availed that opportunity and remained negligent in pursuing the proceedings. So far as the averments made in the petition about the WhatsApp chat, whereby the earlier Advocate had not informed the petitioner about the proceedings in appropriate manner. He has submitted that there is no other proof on record and even WhatsApp chat is not supported by the certificate required under Section 65(B) of the Evidence Act and therefore it is not required to be appreciated.

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06. I have considered the submissions made by counsel for the parties and also perused the material available on record.

07. From the WhatsApp chat, it clearly transpires that the petitioner was consistently following up the matter with her Advocate. It is an undisputed fact that the petitioner, being a lady residing at Chandigarh, had engaged an Advocate at Indore for the proceedings going on at Indore and on the basis of the information received from the Advocate, she has proceeded further. Though from the record, it prima facie transpires that the petitioner has followed up the matter persistently and consistently though it seems that for the reason best known to the earlier Advocate, he had given wrong information to the petitioner about the development in the proceedings at the relevant stage. It also transpires from the earlier order passed in the matter, whereby the same Advocate had given no objection regarding the order of status quo, which is normally strange in the facts and circumstances of the case, more particularly, looking to the facts and circumstances of the case. Though, it is contended by the respondent that no other proof like any complaint is filed before the Bar Council by the present petitioner against the earlier Advocate or any further correspondence with the Advocate is available on record, therefore, it cannot be said that from the bare reading of the material available on record and also considering the conduct of the Advocate in conducting the judicial proceedings on behalf of the present petitioner, it can be easily **heard** that petitioner cannot be punished due to the negligent act or deliberate lacunas, committed by the Advocate in discharging his duties for conducting the matter in appropriate.

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08. I am of the view that the petitioner should not suffer for the mistake committed by the counsel and therefore, the Court has to exercise jurisdiction under Article 227 of the Constitution of India to prevent the miscarriage of the justice. Accordingly, the petition is required to be allowed by granting relief in terms of paragraph 7-B with a further direction to concerned Court to give the proper opportunity of hearing to the present petitioner and pass appropriate order in accordance with law. It is expected that now the petitioner will also see that on every date, which is fixed for the proceedings before the trial Court, the petitioner or his Advocate shall remain present in the proceedings of the case as per law.

09. Considering the facts and circumstances of the case, though respondent is not prima facie found at fault in the matter for passing such order but there may be any reason, but the fact remains that the respondent had to appear before the Court and due to the inaction on the part of the earlier Advocate/petitioner before the trial Court and the trial Court has required to pass the impugned order, which is now set aside by this Court. Therefore, I am of the view that appropriate cost of Rs.5,000/- is required to be paid by the respondent. However, considering the fact which is emerging from the record, this Court conscience is also shocked to know that Advocates who are representing the parties are not discharging with all integrity and sincerity, which emerges from the record. Let the petitioner serve copy of this order to State Bar Council of M.P.for taking note of the facts. Let the Bar Council may take cognizance of such relevant aspects and if requires can take *suo motu* action against the concerned Advocate who

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earlier appeared for the petitioner in trial Court. In view of this Court, matter required to be viewed very seriously as it amounts to professional misconduct and also in view of the provisions of Section 35 of the Advocates Act, 1961 and provisions of the Bar Council of India Rules, now it is high time for the Bar Council to take proper call in such matter and appropriate action may require to be taken against such erring counsel who are causing certain prejudice to the rights of the parties who have engaged the Advocates. It is also open for the Bar Council to find out any role played by the Advocate for the defendant in the matter which can be considered as to whether it can be considered is a collusion or not between the parties and concerned Advocate. It is expected that Bar Council shall proceed with the matter in appropriate manner, if it is found that there is some seriousness in the conduct of the respective Advocates, then take appropriate action in accordance with law with a view to maintain a higher standards of the noble professionals.

10. Registry is directed to send entire copy of the petition of Bar Council of M.P. within seven days.

11. Accordingly, the petition stands allowed and disposed off

(SANDEEP N. BHATT)
JUDGE

Shilpa