

RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

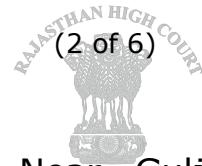
S.B. Civil Miscellaneous Appeal No. 4812/2019

1. Smt. Rashidan W/o Abdul Shakur, R/o Chokri Topkhana Huzuri, Opposite Nakkalan Haweli, Ghatgate Bazar, Jaipur since died during the pendency of the suit leaving following legal representative
2. Mohammed Shafiq Adopted S/o Late Abdul Shakur And Smt. Rashidan, R/o Chokri Topkhana Huzuri, Opposite Nakkalan Haweli, Ghatgate Bazar, Jaipur.

----Appellants

Versus

1. Smt. Noorjahan Widow of Abdul Hameed since died during the pendency of the suit, R/o Jaipur City Chokri Topkhana Huzuri, Near Guljar Masjid, Near Mohalla Ootwalan, Jaipur.
2. Smt. Akhtar D/o Abdul Hameed, R/o Jaipur City Chokri Topkhana Huzuri, Near Guljar Masjid, Near Mohalla Ootwalan, Jaipur.
3. Attu @ Abdul Raheem S/o Abdul Hameed, since died during the pendency of the suit, R/o Jaipur City Chokri Topkhana Huzuri, Near Guljar Masjid, Near Mohalla Ootwalan, Jaipur.
4. Sappu @ Salam S/o Abdul Hameed, R/o Jaipur City Chokri Topkhana Huzuri, Near Guljar Masjid, Near Mohalla Ootwalan, Jaipur.
5. Abdul Latif S/o Abdul Hameed, R/o Jaipur City Chokri Topkhana Huzuri, Near Guljar Masjid, Near Mohalla Ootwalan, Jaipur.
6. Saddik @ Goonha S/o Abdul Hameed, R/o Jaipur City Chokri Topkhana Huzuri, Near Guljar Masjid, Near Mohalla Ootwalan, Jaipur.
7. Mohammed Sabir S/o Abdul Hameed, R/o Jaipur City Chokri Topkhana Huzuri, Near Guljar Masjid, Near Mohalla Ootwalan, Jaipur.
8. Smt. Asgari D/o Abdul Hameed, R/o Jaipur City Chokri Topkhana Huzuri, Near Guljar Masjid, Near Mohalla Ootwalan, Jaipur.
9. Parveen D/o Abdul Hameed, R/o Jaipur City Chokri



Topkhana Huzuri, Near Guljar Masjid, Near Mohalla Ootwalan, Jaipur.

----Respondents

For Appellant(s) : Mr.Mohammed Anees

For Respondent(s) : Mr.Samar Pratap Singh Naruka & Lokesh Tiwari for Mr.M. M. Ranjan, Sr.Adv.

JUSTICE ANOOP KUMAR DHAND

Order

15/01/2026

1. By way of filing this appeal, a challenge has been led to the impugned order dated 30.07.2019 passed by the Additional District Judge No.4 Jaipur Metropolitan by which the application submitted by the appellants under Order 9 Rule 9 CPC has been rejected.

2. Learned counsel for the appellants-plaintiffs (hereinafter referred to as "the plaintiffs") submits that a suit for eviction and mesne profit was filed by them against the defendants-respondents (hereinafter referred to as "the defendants") in the year 1989. Counsel submits that after framing of the issues, the case was posted for recording of the evidence of the plaintiffs. Counsel submits that when the case was listed on the fateful day, i.e., on 21.09.2010, the case was deferred for 25.10.2010, but due to an inadvertent mistake, a wrong date was noted in the diary, i.e., on 25.11.2010. Counsel submits that on account of the aforesaid mistake, the case was dismissed in default on 25.10.2010 and thereafter, an application under Order 9 Rule 9 CPC along-with an application under Section 5 of Limitation Act



was submitted for restoration of the suit and for condoning the delay in filing the aforesaid application respectively. Counsel submits that though the prescribed limitation for filing the application is 30 days, however, the said application was submitted with slight delay as the plaintiffs were out of town due to some personal and urgent domestic work. This reason was also precisely explained in the application filed under Section 5 of the Limitation Act seeking condonation of delay, but the said reason was not appreciated by the trial Court and in spite of deciding the restoration application on its merits, the same has been rejected on the technical count, i.e., on the ground of delay. Counsel submits that important question of law and facts are involved in the suit, which are liable to be decided and adjudicated on merits, based on the evidence to be led by both the sides and, therefore, the order impugned may be set-aside and the suit may be restored to its original number, subject to payment of adequate cost to the defendants-respondents.

3. *Per contra*, learned counsel appearing on behalf of the respondents-defendants opposed the arguments raised by counsel for the plaintiffs and submits that no justification has been prescribed by the plaintiffs for their non-appearance on the fateful day, when the case was called i.e. on 25.10.2010. Counsel submits that even there was delay in filing of the application under Order 9 Rule 9 CPC and the same has been filed without furnishing any justified reason. Therefore, the trial Court has not committed any error in passing the order impugned and the same does not



warrant any interference of this Court and the instant appeal is liable to be rejected.

4. Heard and considered the submissions made at the Bar and perused the material available on record.

5. Perusal of the record indicates that a suit for eviction and mesne profit was filed by the plaintiffs against the defendants before the trial Court way back in the year 1989, wherein after completion of the pleadings of the parties, issues were framed on 05.09.1994 and thereafter, the case was posted for recording of the evidence of the plaintiffs.

6. As per the case of the plaintiffs, when the case was posted before the trial Court on 21.09.2010, the case was deferred for 25.11.2010 and this date was noted in the diary. Counsel submits that the case was called in between by the Court below, i.e., on 25.10.2010 and because of non-appearance of the plaintiffs, the case was dismissed in default. As per the case of the plaintiffs, the aforesaid mistake has occurred due to recording of a wrong date in the diary i.e. 25.11.2010 in place of 25.10.2010. Therefore, the aforesaid bonafide mistake has occurred on the part of the plaintiffs.

7. An application under Order 9 Rule 9 CPC was submitted for restoration of the suit along-with an application under Section 5 of the Limitation Act seeking condonation of delay in filing the application and the reason assigned in the application is the plaintiffs was that they were out of town during the period in question.



8. In the considered opinion of this Court, the delay was not such which could be held to be fatal or prolonged. There was a slight delay, which has been satisfactorily explained by the plaintiffs and therefore, the trial Court has committed an error in rejecting the application submitted by the plaintiffs.

9. Looking to the fact that important question of law and facts are involved in the suit with regard to eviction or non-eviction of the defendants and the same is liable to be decided on its merits by the trial Court, at the appropriate stage, after recording the evidence of both the sides and considering the overall facts and circumstances of the case, this Court finds that the order impugned is not liable to be sustained and is hereby quashed and set-aside. The application filed by the plaintiffs before the trial Court under Order 9 Rule 9 CPC read with Section 5 of the Limitation Act stands allowed.

10. The suit is ordered to be restored to its original number and the parties are directed to appear before the trial Court on 16.02.2026 provided the plaintiffs would pay a cost of Rs.10,000/- to the defendants on or before the next date of hearing i.e. 16.02.2026 and would plant 25 saplings/plants of shaded trees in public vicinity area before the next date of trial Court. It is made clear that in case of any default committed by the plaintiffs, the same be reported to this Court by the trial Court.

11. The plaintiff shall submit a proof in this regard along-with photographs before the trial Court along-with an undertaking that he would take care of these plants till the plants grown up or till final disposal of the suit.



12. The reasons for passing the present order directing the plaintiff to plant 25 saplings/plants is in the interest of public at large and for the greater public good. Planting trees is considered as an appropriate initiative as it will provide numerous benefits to the city and the surrounding community for decades and centuries. Future generations will get benefit from cleaner, fresh oxygen-rich environment.

13. It is expected from the trial Court to make all possible endeavours to proceed with the proceedings of the suit expeditiously, without entertaining unnecessarily requests of adjournments of either sides, looking to the fact that the suit was filed in the year 1989, i.e., more than 37 years back.

14. With the aforesaid observations/directions, the instant Civil Miscellaneous Appeal stands disposed of. The stay application and all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

Aayush Sharma/10