

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



S.B. Civil Writ Petition No. 12882/2024

1. Arjun Lal @ Prahlad S/o Late Shri Narayan Das, R/o Village Goner, Tehsil Sanganer, District Jaipur.
2. Mst. Prabhati W/o Late Shri Narayan Das, R/o Village Goner, Tehsil Sanganer, District Jaipur.
3. Ramsharan S/o Late Shri Narayan Das, R/o Village Goner, Tehsil Sanganer, District Jaipur. Presently Residing At A-23, Jda Staff Colony, Jagatpura, Tehsil Sanganer, District Jaipur.

----Petitioners

Versus

1. Rameshwar Prasad S/o Late Shri Radhakishan Sharma, R/o Village Goner, Tehsil Sanganer, District Jaipur.
2. Ramniwas S/o Late Shri Radhakishan Sharma, R/o Village Goner, Tehsil Sanganer, District Jaipur.
3. Gopal Meena Son Of Shri Rampal Meena, Aged About 46 Years, Resident Of Bawadi Ki Dhani, Siroli, Jaipur (Raj.)
4. Prakash Chand Meena Son Of Shri Panchu Ram Meena, Aged About 34 Years, Resident Of Baba Tiba Ki Dhani, Siroli, Jaipur (Raj.)
5. Sugan Lal Meena Son Of Shri Prabhy Narayan Meena, Aged About 31 Years, Resident Of Peepli Ki Dhani, Siroli, Jaipur (Raj.)

----Respondents

For Petitioner(s)	:	Mr. R.K. Agarwal, Sr. Adv. with Mr. Mamoon Khalid
For Respondent(s)	:	Mr. Manoj Kumar Bharadwaj Mr. Prahlad Sharma Mr. Ram Prasad Sharma

JUSTICE ANOOP KUMAR DHAND

Order

06/05/2025



1. By way of filing this writ petition, a challenge has been led to the impugned order dated 28.05.2024 passed by the Board of Revenue (for short 'the Board'), by which the revision petition submitted by the respondents under Section 230 of the Rajasthan Tenancy Act, 1955 (for short 'the Act of 1955') has been allowed and the order dated 28.07.2022 passed by the Assistant Collector, Jaipur City-II has been quashed and set-aside.

2. Learned counsel for the petitioner submits that the plaintiff-respondents filed a revenue suit against the petitioners-defendants before the Assistant Collector, Jaipur City-II, wherein, the petitioners were appearing, but on account of illness of the petitioner No.2, they could not appear before the Court below on the fateful day i.e. on 13.04.2022, hence, ex-parte order was passed and decree was drawn on 29.04.2022. Counsel submits that the petitioners were not aware about passing of the ex-parte order and decree and immediately after getting knowledge of the same, an application under Order 9 Rule 13 CPC was submitted on 06.06.2022 for setting aside the ex-parte order and decree. Counsel submits that the reasons for delay were explained in the application itself, but no application under Section 5 of the Limitation Act was submitted with the application under Order 9 Rule 13 CPC. Counsel submits that when the objection was taken in this regard, an application under Section 5 of the Limitation Act for condonation of delay was filed on 27.06.2022. Counsel submits that considering the averments made in the application under Order 9 Rule 13 CPC and



application under Section 5 of the Limitation Act, the application filed by the petitioner was allowed and the ex-parte order and decree were quashed and set-aside by the Assistant Collector vide order dated 28.07.2022. Counsel submits that aggrieved by the aforesaid order, the respondents preferred an appeal before the Board and the Board has quashed and set-aside the order on a technical count that the application under Section 5 of the Limitation Act was not submitted along with application under Order 9 Rule 13 CPC, instead it was submitted subsequently. Counsel submits that there was no need to file separate application seeking condonation of delay as the reasons were well explained in the application under Order 9 Rule 13 CPC itself, but these facts were overlooked by the Court below and the order dated 29.04.2022 has been quashed and set-aside by the Assistant Collector. Counsel submits that the discretion of the Revisional Court should have been exercised sparingly, but in the instant case, the matter has been decided on its merits. Counsel submits that there was slight delay in filing the application for setting aside the ex-parte order and decree. Counsel submits that the delay was hardly of 6-7 days and the same was well explained.

3. Counsel has placed reliance upon the following judgments passed by the Apex Court:

1.State of M.P. and Another vs. Pradeep Kumar and Another reported in **2000 (7) SCC 372.**

2. Bhagmal and Others vs. Kunwar Lal and Ors. reported in **2010 (12) SCC 159.**

3. M.K. Prasad vs. P. Arumugam reported in **2001 (6) SCC 176.**

4. Counsel submits that in view of the submissions made herein above, the impugned order dated 28.05.2024 passed by the Board be quashed and set-aside.

5. Per contra, learned counsel for the respondents opposed the arguments raised by the counsel for the petitioners and submitted that prior to passing of ex-parte order, the petitioner remained absent on 06.04.2022 and 11.04.2022, that is why, the ex-parte order was drawn on 13.04.2022 and thereafter, ex-parte decree was passed on 29.04.2022. Counsel submits that the respondents, under apprehension of filing appeal before the Appellate Court, filed a caveat and the petitioners might have received copy of the caveat and became aware of the ex-parte order and decree, but they were sleeping over the matter and they have availed two parallel remedies; one of filing appeal before the Appellate Authority; and second by filing an application under Order 9 Rule 13 CPC without filing application under Section 5 of the Limitation Act seeking condonation of delay. Counsel submits that these facts have been appreciated by the Board while passing the order impugned, which requires no interference of this Court. Counsel submits that under these circumstances, the instant petition is liable to be rejected.

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

7. Perusal of the record indicates that an ex-parte order was passed against the petitioner on 13.04.2022 and thereafter, ex-parte decree was drawn on 29.04.2022. It is the case of the petitioners before the Assistant Collector that because of illness of their mother, the petitioners could not appear and accordingly, the above impugned orders were passed. The petitioners submitted the application under Order 9 Rule 13 CPC on 06.06.2022 and also submitted application under Section 5 of the Limitation Act for condoning the delay, when objection was taken by the respondents. The reasons mentioned in these applications were considered by the Assistant Collector and accordingly, the delay was condoned and the application filed by the petitioner under Order 9 Rule 13 was allowed, but the Board has quashed the order by holding that the application under Section 5 of the Limitation Act was not submitted with the original application under Order 9 Rule 13 CPC.

8. In the opinion of this Court, the reasons of delay were well explained in the application under Order 9 Rule 13 CPC and thereafter, the application under Section 5 of the Limitation Act was also submitted for condonation of delay. Hence, the application under Order 9 Rule 13 CPC was not defective. The deficiency pointed out by the respondents was cured by the petitioner, immediately after filing the application under Section 5 of the Limitation Act.

The delay was hardly of six days and the same was explained by the petitioners which was accepted and delay

was condoned by the Assistant Collector and ex-parte order and decree were set-aside.

It is the settled proposition of law that the superior Court should not disturb such finding, unless the exercise of discretion by the Trial Court was on wholly untenable grounds or arbitrary or perverse.

The primary function of the Court is to adjudicate the dispute between the parties and advance the substantial justice. Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redressed of the legal injury so suffered.

9. All the material aspects of the matter were well considered by the Assistant Collector while setting aside the ex-parte decree and order and by allowing the application under Section 5 of the Limitation Act.

10. In the considered opinion of this Court, there was no such great delay in filing the application under Order 9 Rule 13 CPC and the same was filed within a period of one month and six days after passing of the ex-parte decree. The reasons explained by the petitioner before the Assistant Collector appears to be satisfactory and the Assistant Collector was right in allowing the application filed by the petitioner and setting aside the ex-parte order and decree, which has unnecessarily been quashed by the Revisional Court in



exercise of revisional jurisdiction contained under Section 230 of the Act of 1955.

11. In view of the above, the order dated 28.05.2024 passed by the Board stands quashed and set-aside.

12. The order dated 28.07.2022 passed by the Assistant Collector stands restored and upheld.

13. The Assistant Collector is directed to decide the suit expeditiously, as early as possible, preferably within a period of one year from the date of receipt of certified copy of the order.

14. In view of the above observations/direction, the instant writ petition stands disposed of. The stay application and all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J