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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE  
HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 30<sup>th</sup> OF JANUARY, 2023**

**MISC. PETITION No. 3210 of 2022**

**BETWEEN:-**

1. **MOHAMMAD SHAKIR S/O SHRI MO. SALEEM, AGED ABOUT 32 YEARS, OCCUPATION: MAJDOORI 21/4, USHAGANJ CHAWNI, INDORE AT PRESENT R/O 3/3, USHAGANJ CHAWNI, BOHAR MASHJID KE PEECHE (MADHYA PRADESH)**
2. **MOHAMMAD ROSHAN S/O MOHAMMAD SALEEM, AGED ABOUT 34 YEARS, OCCUPATION: LABOUR 21/4, USHAGANJ CHAWNI, INDORE. AT PRESENT ADDRESS- 3/3, USHAGANJ CHAWNI, BOHAR MASJID KE PEECHEE, INDORE (MADHYA PRADESH)**
3. **MOHAMMAD SAKEEL S/O MOHAMMAD SALEEM, AGED ABOUT 37 YEARS, OCCUPATION: LABOUR 21/4, USHAGANJ CHAWNI, INDORE. AT PRESENT ADDRESS- 3/3, USHAGANJ CHAWNI, BOHAR MASJID KE PEECHEE, INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(SHRI NITIN NANOREYA, LEARNED COUNSEL FOR THE PETITIONERS.)***

**AND**

1. **AJHARNOOR S/O SHRI MAJHARNOOR, AGED ABOUT 62 YEARS, OCCUPATION: BUSINESS 11/4, USHAGANJ CHAWANI (MADHYA PRADESH)**
2. **NAZARNOOR S/O MAZHARNOOR, AGED ABOUT 60 YEARS, OCCUPATION: BUSINESS 11/4, USHAGANJ CHAWNI, INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(NONE FOR HE RESPONDENTS DESPITE SERVICE OF NOTICE.)***

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*This petition coming on for hearing this day, the court passed the*

*following:*

**ORDER**

The petitioners/defendants have filed the present petition under Article 227 of the Constitution of India against order dated 12.5.2022 whereby their application filed under Order 9 Rule 7 read with Section 151 of the C.P.C. has been dismissed.

The petitioners are defendants in the suit filed by the respondents for eviction and arrears of rent. On 6.4.2022, the next date was fixed for further proceedings on 20.4.2022. Since no one appeared on behalf of the petitioners, the trial Court proceeded ex-parte against them. On 27.4.2022 when the counsel for the petitioners went to attend the proceedings, he came to know that the petitioners have already been proceeded ex-parte on 20.4.2022. Immediately, he filed an application under Order 9 Rule 7 of the C.P.C. Along with the application, he also filed photocopy of the lawyers' diary, but the trial Court has dismissed the application. Hence, the present petition before this Court.

Learned counsel for the petitioners submits that inadvertently the counsel appearing before the trial Court has noted the date of the case on 27.4.2022 instead of 20.4.2022. He has also produced the diary of the counsel appearing before the trial Court. There is no entry of the case on 20.4.2022 and the entry of the case has wrongly been made on 27.4.2022. Therefore, there is bona fide mistake on the part of the counsel. It is settled law that the parties should not suffer for the default of he counsel.

In view of the above, this petition is allowed and the impugned order dated 12.5.2022 is hereby set aside. Resultantly, order dated 20.4.2022 by which the petitioners were proceeded ex-parte is also hereby set aside and the petitioners are permitted to participate in the proceedings.

Alok

