

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

BEFORE

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

ON THE 29th OF JULY, 2024

WRIT PETITION No.28958 of 2003

NARESH KUMAR AND ANOTHER

Versus

VIVEK KUMAR SHRIVASTVA AND OTHERS

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Appearance:

Shri Abhishek Singh – Advocate for the petitioners.

None for the respondents though served.

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ORDER

This petition under Article 227 of Constitution of India has been filed against order dated 12/03/2001 passed by 10th Additional District Judge, Bhopal in Civil Suit No.30-A/1997, by which an application filed by petitioners under Order 9 Rule 7 of CPC for setting aside *ex-parte* proceedings as well as for taking written statement on record has been rejected.

2. It is submitted by counsel for petitioners that petitioners appeared before the Trial Court on 11/07/2000. Thereafter on 25/08/2000, 18/12/2000 and 15/01/2001, time was sought to file written statement. On 15/01/2001, petitioners were not well and their counsel pleaded no instructions and accordingly, petitioners were proceeded *ex-parte*. It is further submitted that on 27/02/2001, not only petitioners moved an application under Order 9 Rule 7 CPC but also filed their written statement. However, by impugned order dated 12/03/2001, Trial Court

rejected the application filed under Order 9 Rule 7 CPC and also held that the written statement filed by petitioners on 27/02/2001 cannot be taken on record.

3. Challenging the order passed by the Court below, it is submitted by counsel for petitioners that on 15/01/2001, counsel for petitioners had pleaded no instructions. Petitioners were not aware of the fact that such statement could be made by their counsel. It is further submitted that whenever counsel for a party pleads no instructions, then the Court should have issued a notice to the petitioners. However, it is submitted that in view of interim order dated 05/01/2004, further proceedings in the suit have been stayed. It is further submitted that petitioners are ready to deposit a cost of Rs.20,000/- for the inconvenience which has been caused to the plaintiff.

4. None for the respondents though served.

5. Considered the submissions made by counsel for the petitioners.

6. The suit was filed in the year 1997 i.e. 27 years have passed. By interim order dated 05/01/2004, further proceedings were stayed. It is true that in spite of multiple opportunities, petitioners did not file their written statement but on 15/01/2001 counsel for petitioners pleaded no instructions.

7. It is the case of petitioners that petitioners were not aware of the fact that their counsel would plead no instructions.

8. The Supreme Court in the case of **Malkiat Singh and Another Vs. Joginder Singh and Others** reported in (1998) 2 SCC 206 has held as under:-

“6. There is no denying the fact that the appellants had engaged a counsel to defend them in the civil suit. The counsel for the appellants pleaded “no

instructions” but the court did not issue any notice to the appellants, who were admittedly not present on the date when their counsel reported no instructions in the court. It is nobody's case that the counsel informed them after he had reported no instructions to the court. The appellants only came to know about the order dated 18-11-1991 and the ex parte decree dated 8-2-1992 when they approached their counsel on 6-6-1992. It was within four days thereafter that the appellants filed an application under Order 9 Rule 13 CPC for setting aside the order dated 18-11-1991 and the decree dated 8-12-1992.

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 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: (SCC p. 257, para 4)

“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.” ”

9. Accordingly, this Court is of considered opinion that before proceeding *ex-parte* against petitioners, Trial Court should have issued notices to the petitioners on the no instructions pleaded by their counsel.
10. Be that whatever it may be.
11. 23 long years have passed after rejection of application under Order 9 Rule 7 CPC and Trial Court could not proceed on account of interim order passed by this Court.
12. *Ex consequenti*, order dated 12/03/2001 passed by 10th Additional District Judge, Bhopal in Civil Suit No.30-A/1997 is hereby **set aside**. The *ex-parte* proceedings drawn against petitioners on 15/01/2001 are hereby **set aside** and written statement filed by petitioners is taken on record.
13. However, this Court cannot lose sight of the fact that 23 valuable years of the plaintiff have spoiled, therefore this petition is **allowed** with cost of **Rs.20,000/- (Rupees Twenty Thousand Only)** to be deposited by the petitioners before the Trial Court by the next date of hearing.
14. It is made clear that in case if cost is not deposited within the stipulated period, then this order shall automatically lose its effect.

Plaintiff shall be entitled to withdraw the cost so deposited by the petitioners.

(G.S. AHLUWALIA)
JUDGE

S.M.