

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Revision No.3147/2004/TA/Karauli :**

1. Saraswati widow of Shri Bharosi
  2. Bhim Singh S/o Shri Bharosi
- Both are by caste Jat, residents of Village Dahmoli,  
Tehsil & District Karauli.

... Petitioners.

**Versus**

1. Vijendra S/o Shri Dodi, by caste Jat, residents of Village Dahmoli,  
Tehsil & District Karauli.
2. State of Rajasthan.
3. Karan Singh } sosn of Shri Bharosi
4. Tej Singh }  
No.3 & 4 are by caste Jat, residents of Village Dahmoli,  
Tehsil & District Karauli.

... Non-petitioners.

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**S.B.**

Shri Satish Chand Kaushik, Member

**Present :**

Shri Vaibhav Pareek : Counsel for the petitioners.  
Shri Virendra Panwar : Dy. Govt. Advocate for non-petitioner no.2.  
Shri N.K. Goyal : counsel for non-petitioners no.3 & 4.  
None present : on behalf of non-petitioner no.1.

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Dated : 22.4.2016

**J U D G M E N T**

This revision petition has been preferred under section 230 of the Rajasthan Tenancy Act, 1955 (in short to be referred "the Act") against the order of Sub Divisional Officer, Karauli dated 31.5.2004 passed in case no.6/2001.

2. The brief facts of the case are that a revenue suit was filed under section 88, 53 & 188 of the Rajasthan Tenancy Act, 1955 in respect of land bearing khasra no.219 measuring 3 bigha 2 biswa which was decreed ex-parte by Sub Divisional Officer, Karauli vide its judgment & decree dated 09.6.1995. After a lapse of about 6 years, one application

under Order 9 Rule 13 of the Code of Civil Procedure was filed for setting aside ex-parte decree dated 09.6.1995 and vide its order dated 31.5.2004, the learned lower court set aside the ex-parte judgment & decree dated 09.6.1995. Being aggrieved with that order, this revision has been preferred.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioners argued inter alia on the ground that in this matter, non-petitioner no.1 Vijendra was served on 12.8.1988 for filing Vakalatnama of Shri Shyam Babu Pareek, advocate and for filing written statement, time was taken upto 22.3.1990. After giving many opportunities, when the written statement was not filed by the non-petitioner Vijendra, then ex-parte proceedings were initiated. After that the non-petitioner filed an application for setting aside ex-parte proceedings and that application was allowed on the cost of Rs.100/- on 28.8.1991, but that order was not complied with and non-petitioner became absent again and then on 19.6.1995 after taking the evidence of the plaintiff, the ex-parte decree was passed by the learned Sub Divisional Officer and the file was sent to record room. After that in the year 2001, non-petitioner filed an application for setting aside of ex-parte decree alleging that he came to know about the ex-parte judgment by Halka Patwari on 06.02.2001. In the application of setting aside of ex-parte decree, there was no ground mentioned while this application was moved so late, why the orders of learned Sub Divisional Officer were not complied with, why the cost was not paid and written statement was not filed earlier in time. The learned Sub Divisional Officer without assigning any reason for condonation of delay on the cost of Rs.300/- set aside the ex-parte decree; which is totally illegal, perverse, without jurisdiction and against the set norms of law. In support of his arguments, learned counsel for the petitioners cited following rulings :

2013(4) DNJ (Raj.) page 1736  
2010(1) DNJ (Raj.) page 58  
2009 DNJ (SC) page 962  
2010(10) WLC (Raj.) page 706  
2013(2) RRT page 1219  
2007(2) RLW page 810  
1997 DNJ (SC) page 156  
2012(1) DNJ (Raj. page 324

5. On the other hand, learned counsel for the non-petitioners argued that the order of the learned Sub Divisional Officer is totally correct, no interference is required and this revision deserves to be dismissed with cost. It is the basic principle of law that party must be given proper opportunity for hearing.

6. I have given my thoughtful consideration to the rival contentions and scanned the matter carefully.

7. The only ground mentioned by the learned Sub Divisional Officer is that it is the principle of natural justice that both the parties to be heard. The learned Sub Divisional Officer specifically mentioned in his order dated 31.5.2004 that "I perused the file and gone through it. Though in original suit, the defendant has been proceeded ex-parte and after giving many opportunities, he has not filed written statement and then he was proceeded ex-parte. Even keeping in view the principle of natural justice, the application is allowed at the cost of Rs.300/." So far cancellation of ex-parte judgment & decree is concerned, in the provisions mentioned in Order 9 Rule 13 CPC, it is specifically mentioned that if he satisfies the court that the summons were not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. Thus, it is clear that there are only two grounds available for setting aside the decree : (1) the summons were not duly served, and (2) the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing. In this matter, so far the first ground is concerned, it cannot be taken into consideration because it is clear from the file that defendant was duly served and appeared in the court through advocate much before in 1988. Thereafter, his advocate taken time for filing of written statement, but it was not filed. Thereafter, he proceeded ex-parte. On his application, ex-parte order was set aside and he was granted time to file written statement and contest the matter on cost of Rs.100/-, but the defendant had taken no head and again became absent and thereafter the court was left with no other option except to proceed ex-parte against him, hence ex-parte decree passed.

8. Now the second ground is clear. Second ground for setting aside ex-parte decree is that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing. In his application filed under Order 9 Rule 13, no sufficient cause was shown for

why he became absent from the court, what was the sufficient cause which prevented him from appearance in the court proceedings. Not only this, even the learned lower court has not mentioned in its order that what was the sufficient cause. If we are going through Order 9 Rule 13 of the CPC, one thing is also clear in its proviso that :-

"Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim."

As such, this provision is mandatory. No court shall set aside decree ex-parte on the ground that there has been an irregularity in service of summons when it is proved that the defendant was having knowledge of the court proceedings. Here in this matter, it is well proved that the defendant was having full knowledge of court proceedings. He has not mentioned any suffice cause which prevented him from appearance in the court and from filing his written statement etc. Even otherwise, he has moved his application for setting aside ex-parte decree after a lapse of near about 6 years and that delay has also not been explained. The Hon'ble Supreme Court in the matter of "Shyam Sunder Sharma Vs. Panna Lal Jaiswal" AIR 2005 SC page 226 held that since dismissal of appeal against ex-parte decree as time barred and application of condonation of delay is rejected, order of setting aside of ex-parte decree not maintainable. In this matter, no application for condonation of delay was moved. Delay was not explained and in such circumstance also, the application for setting aside ex-parte decree was liable to be rejected, which was admitted by the learned lower court and as such the order of learned lower court is against the established principles and norms of the legal proprietary.

9. As discussed above, the revision petition is liable to be accepted, hence it is accepted and the impugned order of the learned Sub Divisional Officer, Karauli dated 31.5.2004 deserves to be quashed, which is hereby quashed.

Pronounced.

**(SATISH CHAND KAUSHIK)**  
Member

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