

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

**Revision No.3947/2006/TA/Jalore :**

Khangar Singh S/o Durg Singh, Rajput, R/o Chitalwana, Tehsil Sanchor,  
District Jalore.

... Revisionist/ Plaintiff.

**Versus**

State of Rajasthan.

... Respondent/ Defendant.

**S.B.**

**Shri Rajinder Kumar, Member**

**Argued by :**

Shri Gaurav Dave : counsel for the revisionist.

Shri V.P. Singh : Govt. Advocate for the respondent.

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

**Dated : 14.11.2018**

1. This revision is directed against the order dated 23.01.2006 of the trial court of Assistant Collector, Sanchor, whereby the review application submitted on behalf of the revisionist/ plaintiff was dismissed.
2. The facts leading to this petition are that the revisionist/ plaintiff filed a suit in the trial court against the respondent/ defendant. The said suit was decreed by the trial court vide judgment and decree dated 21.02.1979. Feeling aggrieved, the respondent/ defendant preferred an appeal in the court of learned Revenue Appellate Authority, Jodhpur and vide judgment dated 22.12.1981, the said appeal was partly accepted setting aside the judgment and decree of the trial court. The matter was remanded to the trial court for deciding the suit afresh. The parties were directed to appear before the trial court

on 15.02.1982. On the stipulated date, the revisionist/ plaintiff appeared in the trial court and on enquiry, he was apprised that the record has not been received from the appellate court. Thereafter, on 21.11.1984, the trial court dismissed the said suit in default of the appearance of the revisionist/ plaintiff. On 12.01.2004, the revisionist/ plaintiff submitted an application for review of the said order, which was dismissed by the trial court vide impugned order on 23.01.2006. Feeling aggrieved, the revisionist/ plaintiff filed an appeal in the court of learned Revenue Appellate Authority, Jodhpur and vide order dated 23.3.2006, the said appeal was returned to the revisionist/ plaintiff observing that appeal against the order of trial court was not maintainable in his Court. Hence, this revision has been filed by the revisionist/ plaintiff in this Board.

3. I have heard the learned counsels.
4. On behalf of the revisionist/ plaintiff, it was argued that the learned appellate court while remanding the case directed the parties to appear before the trial court on 15.02.1982. On the said date, the revisionist/ plaintiff appeared in the trial court but he was apprised by the Reader of the Court that the file has not been received from the appellate court. Thereafter, the trial court did not issue any notice to the revisionist/ plaintiff to appear in the Court and illegally dismissed the suit in default of his appearance on 21.11.1984. The learned trial court wrongly marked the presence of the revisionist/ plaintiff in ordersheets and thereafter wrongly dismissed his suit in default of his appearance. The fact that the thumb impressions of the revisionist/ plaintiff are not available on the ordersheet proves his version. In this way, a grave injustice has been done with the revisionist/ plaintiff. Therefore, a prayer was made to accept the revision petition and to restore the instant suit to its original number so that the controversy between the parties may be adjudicated on merits.

5. On behalf of the respondent/ defendant, it has been argued that the revisionist/ plaintiff has been negligent in the conduct of his suit, therefore, the impugned order of the trial court is perfectly justified.
6. I have given my thoughtful consideration to the aforesaid submissions and perused the record carefully.
7. This suit was filed by the revisionist/ plaintiff four decades ago. Initially, his suit was decreed by the trial court on 21.02.1979. The appeal preferred by the State Government against the said judgement and decree was accepted by the learned Revenue Appellate Authority on 31.12.1981 and the suit was remanded to the trial court for fresh adjudication as per its observations. The parties were directed to appear in the trial court on 15.02.1982. From a perusal of the ordersheets of the trial court, it is indicated that on 15.02.1982, the record of the trial court could not be received and it was only on 23.9.1982 that the same was received. Therefore, on that date the suit was ordered to be registered to its original number and both the parties were also directed to be summoned through notices for 30.10.1982. On the next date, i.e., 30.10.1982, both the plaintiff and the representative of the State Government were present in the Court. On the subsequent dates, the adjournments were granted by recording the presence of the revisionist/ plaintiff and/or his counsel and the representative of the State Government. On 06.3.1984, no one was present on behalf of the revisionist/ plaintiff whereas the representative of the State Government was present, therefore, the suit was dismissed in default of plaintiff's appearance.
8. On 24.3.1984, the revisionist/ plaintiff appeared in the trial court and submitted an application for restoration of his suit. The notices of the said application were ordered to be served upon the respondent/

defendant. On 28.8.1984, the plaintiff's counsel was present in the Court and his signatures were obtained on the ordersheet. On 21.11.1984, no one was present on behalf of the plaintiff and representative of the State Government was present. Therefore, on the said date, the suit was again ordered to be dismissed-in-default, though on that date the application for restoration of suit was required to be dismissed in default of his appearance. Be that as it may, a sum-up of proceedings of the trial court indicates that the revisionist/ plaintiff slept over his matter and filed an application for review of the order dated 21.11.1984 on 13.02.2004, i.e., after a lapse of about two decades. It is also pertinent that application for review of that order was not maintainable. The applicant ought to have filed an application for restoration of restoration application. However, wrong mentioning of a provision of law does not alter the situation. The fact remains that the revisionist/ plaintiff did not take steps to get his suit restored for twenty long years.

9. It is also pertinent that the revisionist/ plaintiff has asserted in this revision petition that after remand of suit, he or his counsel did not appear in Court and his/ his counsel's presence has been wrongly marked in the court proceedings. But in the review application filed before the trial court, the revisionist/ plaintiff did not state that his presence or his counsel's presence was wrongly marked in the ordersheets. Therefore, the revisionist/ plaintiff has introduced a new story in this revision petition. The fact that the revisionist/ plaintiff appeared in the trial court is proved from the fact that on 24.3.1984, an application for restoration of suit was filed by the plaintiff and as noted above, on subsequent dates, his counsel appeared in the court.
10. In this revision petition, the petitioner, on the one hand has alleged that he did not engage any counsel after remand of case to the trial court and on the other hand he has mentioned that his counsel did

not inform him about dismissal of this suit in default of his appearance. It, therefore, appears that the revisionist/ plaintiff is avoiding his responsibility of remaining vigilant and putting it on the shoulders of other persons. A litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings of a case filed by him. He cannot be permitted to sleep and awake after a long period of twenty years and then put entire blame upon the Court or the Advocate concerned.

11. It is revealed from the above that the revisionist/ plaintiff has been careless and negligent in pursuing his case. Thus, no indulgence can be shown to him by this Board. The revisionist/ plaintiff has not made out a case for restoration of suit. There is no explanation worth the name, much less a bonafide explanation offered by the revisionist/ plaintiff for seeking condonation of delay of 20 years in filing application for restoration of his suit dismissed in default. There is no illegality in the impugned order.

12. Hence, the revision petition is dismissed.

Pronounced.

**(Rajinder Kumar)**  
Member

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