



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 589/2025

1. Smt. Shakuntala W/o Shri Khemraj, Aged About 60 Years, R/o Plot No. 398, Near Police Station Sardarpura, Sardarpura C Road, Jodhpur (Raj), Presently Residing At 86, Flat No. 101, Parshvnath Colony, Nirman Nagar, Jaipur (Raj)
2. Khemraj S/o Shri Lalchand, Aged About 67 Years, R/o Plot No. 398, Near Police Station Sardarpura, Sardarpura C Road, Jodhpur (Raj), Presently Residing At 86, Flat No. 101, Parshvnath Colony, Nirman Nagar, Jaipur (Raj)

----Appellants

Versus

Smt. Pallavi W/o Shri Akash, R/o House No.67, Dev Nagar, Pal Link Road, Jodhpur (Raj)

----Respondent

For Appellant(s)	:	Mr. C.P. Soni.
For Respondent(s)	:	Mr. Shreyansh Bhandari.

HON'BLE MS. JUSTICE REKHA BORANA

Order

03/04/2025

1. The present appeal has been filed against the order dated 01.10.2024 passed by Additional District Judge No.4, Jodhpur Metropolitan in Civil Misc. Case No.125/2021 whereby the application under Order 9 Rule 9 read with Section 151, CPC and Section 5 of the Limitation Act as filed on behalf of the plaintiffs was dismissed.
2. The application was filed on behalf of the plaintiffs with three averments: *firstly*, they had not received back their file from counsel Mr. Naveen Bhandari; *secondly*, they had never instructed counsel Mr. Dharmendra Surana to appear on their behalf; and



thirdly, they were not aware of order dated 11.10.2019 as they did not reside in Jodhpur and did not travel to Jodhpur frequently.

3. The learned Trial Court while rejecting the application found all the three grounds as raised by the plaintiffs to be not tenable.

4. The learned Trial Court specifically observed that *firstly*, none of the lawyers on whom the allegation was levelled by the plaintiffs had been impleaded. *Secondly*, no fact or document whatsoever was placed on record to show that any complaint was filed or any action against the said lawyers was taken by the plaintiffs. *Thirdly*, it is the same lawyer who was representing the plaintiffs in the criminal proceedings who had put in appearance on 11.09.2019 and prayed for time to file *Vakalatnama*. *Fourthly*, the plaintiffs remained present before the Court of Additional Civil Judge No.2, Jodhpur Metropolitan on 21.09.2019 in some criminal proceeding and even on certain other dates in the said case and hence, the fact that they are not the frequent travellers to Jodhpur was also found to be incorrect.

5. Learned counsel for the appellants submits that counsel Mr. Naveen Bhandari who was engaged by the plaintiffs, did not inform them before making a statement before the Court. Further, there was nothing available on record to show that counsel Mr. Dharmendra Surana was instructed by the plaintiffs to put in appearance on their behalf.

6. Counsel submits that counsel Mr. Naveen Bhandari was under an obligation to serve a notice on the plaintiffs before pleading 'no instructions'. The same being not done, it cannot be presumed that plaintiffs were aware of order dated 11.10.2019 on which date, the Court dismissed the suit in default.



7. Per contra counsel for the respondent while supporting the order impugned submits that the same does not deserve interference.

8. Heard the counsels and perused the order impugned.

9. In the specific opinion of this Court, the findings as recorded by the learned Trial Court are totally in consonance with law as well as the material available on record.

10. As observed by the learned Trial Court, a party cannot be permitted to blame the lawyers for his/her negligence without there being any proof of the same.

11. The Court relied upon the judgment of Orissa High Court in ***Shankerlal Patwari vs. Jagannath Mahaprabhu & Ors. I.A. No.348/2019*** (decided on 29.09.2023) wherein, it was observed as under:

"7....

It is very easy to change lawyer and to put blame on the earlier lawyer for his/her negligence, but the Court cannot turn a blind eye to the surrounding circumstances, eventualities and most importantly, the conducts of the party before it marches on to believe the allegations leveled by the party against his advocate as a gospel truth. Moreover, the concerned lawyer has not been made as a party in this case and thus, it is not fair on our part to pass any order against the conduct of the lawyer without hearing him."

12. In the present matter, what is evident is that on 11.09.2019, counsel Mr. Naveen Bhandari who was representing the plaintiffs made a specific submission before the learned Trial Court that he had handed over the brief back to the plaintiffs and hence had no further instructions. On the same date, other counsel Mr. Dharmendra Surana put in appearance and undertook to file *vakalatnama* on the next date.



13. The version/averment of the plaintiffs to the extent that counsel Mr. Dharmendra Surana was not instructed by them cannot be termed to be correct as it is evident on record that it is the same counsel who was representing the plaintiffs in the criminal proceedings. Further, it cannot be presumed that any lawyer would *ipso facto* put in appearance on behalf of any party without being instructed. Further, the allegations have been made by the plaintiffs against two counsels without serving any notice on them and without any complaint being filed against them with the Bar Council. Had the averment made by the plaintiffs been correct, the first step they would have taken was to file a complaint against the counsels with the Bar Council.

14. So far as the ground regarding the non-service of any notice before pleading 'no instructions' is concerned, neither the same had been the averment of the plaintiffs before the learned Trial Court nor the said ground has been raised in the present memo of appeal.

15. This Court does not find any ground to interfere in the order impugned and the appeal is hence, **dismissed**.

16. Stay petition and pending applications, if any, stand **disposed of**.

(REKHA BORANA),J

311-KashishS/-