HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Misc. Appeal No. 681/2008

Pushp Chand

----Appellant

Versus

Smt.madhuRathi

----Respondent

For Appellant(s)	:	Mr. Nishant Shah
For Respondent(s)	:	Mr. C.P. Soni

HON'BLE MR. JUSTICE ARUN MONGA

Order

Reportable
16/07/2025

1. Under challenge before this court is an order dated 01.05.2008 passed by Additional District Judge (Fast Tract) No.3, Jodhpur in Civil Misc. Case No.13/2008, vide which, two separate applicationsi.e. one filed by respondent Nos.1 (co-plaintiff in the suit) and the other by respondent no.3(another co-plaintiff in the suit), both under Order 9 Rule 9 read with Section 151 CPC were allowed.

2. Since the controversy has already been succinctly summed up in an earlier order dated 28.05.2025 passed by this Court, for ease of reference the same is reproduced hereinbelow:-

> *"1. Applicant Before this court seeks revival of his appeal, which was earlier withdrawn as infructuous way back on 05.07.2010 by order of this court. He is one of the defendants in the civil suit originally instituted by co-plaintiff-respondent No.1 herein– Madhu Rathi (plaintiff) before the competent civil court at Jodhpur, wherein the lis pertains to property rights of the suit property.*
> *2. At the outset, on a court query, as to how the instant application is maintainable at this belated stage, learned counsel for the applicant states that subsequent developments and change of circumstances, as more specifically enumerated in the application, are self-speaking, and are compelling enough for the appeal to be heard on merits. Let us first have a look at that.*
> *2.1. Learned counsel states that, briefly speaking, background of the case is that applicant-Pushpchand/current owner originally filed a civil suit on 30.05.1991 against the erstwhile owners of the suit land. Said suit was decreed in favor of Pushpchand on 16.04.1996. In execution of*

the court decree, sale deed was executed in favor of Pushpchand and even mutation entry was carried out in his name in the revenue records. However, in the interregnum, on 29.06.1992, during pendency of the suit filed by Pushpchand, Kalu Ram sold his share in the suit land to 63 different persons including respondent no.1 (Madhu Rathi) and 3 (Vijaylaxmi) herein. A sale deed dated 07.10.1992 was also executed by the vendor/Kalu Ram in favor of those 63 persons. Subsequently, respondent 1 and 3 herein, along with others, sought to implead themselves in the execution proceedings instituted by Pushpchand for effectuating decree dated 16.04.1996 granted in favour, but their applications were dismissed by executing court since they were not party in the original suit filed by Pushpchand.

2.2. Thereafter, the respondent no.1 and 3 and seven others, as a co-plaintiff filed a suit (sometime in September, 1997) against the applicant seeking declaration that decree dated 18.04.1996 passed in favor of Pushpchand was collusive and obtained by fraud. Upon service the applicant appeared and contested the suit.

2.3. Later on, the suit filed was dismissed as withdrawn qua all 9 plaintiffs on 01.06.2004. The withdrawing/dismissal of suit vide order dated 01.06.2004, was neither challenged nor otherwise complained of by any of the parties.

2.4. However, as a bolt from the blue, after more than 2 years, i.e. on 21.08.2006, respondent No.1 and 3 (co-plaintiffs) filed an application under Order 9 Rule 9 CPC seeking restoration of the suit. Application under 9 rule 9 was preferred without filing any application for condonation of delay. Other 7 plaintiffs did not seek restoration of the suit proceedings. Thus, out of 9 plaintiffs, 7 plaintiffs, except respondent no.1 and 3 herein, have withdrawn from the foray. It is this application under order 9 rule 9, which was allowed vide a trial court order dated 01.05.2008, that led to filing of the main appeal under Order 41 of CPC by the applicant herein (bearing Civil Misc. Appeal No.681/2008).

2.5. The aforesaid appeal was admitted by a Coordinate Bench of this Court (then seized of the matter) vide an order dated 26.05.2008 and notices were issued to the respondents, including 1 and 3 herein.

2.6. It so happened that during the pendency of the aforesaid appeal, the applicant herein filed an independent application under Order 7 Rule 11 CPC in the pending trial proceedings, seeking rejection of the plaint, inter alia pleading that it did not disclose any cause of action.

2.7. The learned trial court allowed the application under Order 7 Rule 11 CPC and rejected the plaint and thus dismissed the suit. It was in this background that the trial itself having culminated into finality, owing to dismissal/rejection of the plaint, that the applicant herein filed an earlier I.A. No.7230/2010 and sought to withdraw the main appeal. It is/was stated therein that in view of the suit itself having been dismissed and since the trial proceedings had already concluded, the appeal had thus become infructuous.

2.8. When aforesaid application was taken up by this court, none appeared for the non-applicants/ respondents no.1 and 3 herein who were the only contesting co-plaintiffs in the suit. Be that as it may, this Court vide order dated 05.07.2010 allowed the application for the reasons stated therein and dismissed the appeal as withdrawn.

2.9. Subsequently, as it turned out, the respondent No.1 (co-plaintiff), who had assailed the rejection of the plaint under Order 7 Rule 11 CPC by the trial court by way of filing an appropriate Civil First Appeal No.176/2010, was successful in getting the trial court's order dated 10.02.2010 quashed. Vide judgment dated 29.01.2025 passed by a Coordinate Bench of this Court, the appeal filed by respondents no.1 *and 3 herein (co-plaintiffs), against order 7 rule 11 order passed by trial court, was allowed and suit was restored to its original number and status.*

2.10. A review application was filed by applicant/appellant herein to recall the judgment dated 29.01.2025 ibid, which was disposed of vide order 13.05.2025 dated with certain observation but appellate order dated 29.01.2025 was not recalled as no error apparent on record was found to exist.

3. In the changed circumstances as above, the present application has been filed for recalling of the order dated 05.07.2010, stating that since the appeal was withdrawn as infructuous due to the plaint having been rejected, the appeal, as a necessary consequence of the restoration of the suit, be also restored to its original number.

4. Given that the application to withdraw the appeal as infructuous, which was filed by appellant (applicant herein), was allowed in absence of the non-applicants/respondents for the grounds stated therein, the requirement of notice in the instant application is dispensed with. In any case it was the appellant who had himself withdrawn the appeal and non-appellants/respondents neither appeared nor opposed the same, no prejudice would be caused to them with the nature of order I propose to pass.

5. Learned counsel for the applicant fairly draws my attention to the objection raised by the Registry that the present application, being for restoration of the main appeal which was dismissed as withdrawn on 05.07.2010, and counted from the said date, is time-barred by 5403 days. However, he would argue that the cause of action to file the present application arose only when the suit was restored by this Court vide judgment dated 29.01.2025 and subsequently it arose when review application was disposed on 13.05.2025 and, therefore, the application is not hit by limitation. Be that as it may, he submits that an application under section 5 of the Limitation Act, seeking condonation of delay has also been filed as an abundant caution, accompanied with the application seeking recall of order dated 05.07.2010.

6. Having heard and perused the record of the case file, at the outset, I may observe here that once the suit and proceedings before the trial court stood restored to their original position by order of this Court, as a consequence thereof, all consequential proceedings and/or applications filed or pending or decisions taken thereupon and the consequences thereof also stood revived. Thus, given the circumstances, as enumerated here in above, there is no delay, deliberate or otherwise, in filing of the application seeking to recall order dated 05.07.2010. Application of condonation of delay filed by the applicant here in is allowed for the reasons stated therein.

7. Reverting to the application in hand, trite it may sound, but off-shoot proceedings including any civil revision and/or miscellaneous appeal or pending application in the main trial, are nothing but extensions of the trial itself. Seen from that angle, restoration of the suit would render the appeal in question herein also not infructuous, as was stated while withdrawing the same. The very cause of withdrawing the same as infructuous at that stage was the rejection of the plaint under Order 7 Rule 11 CPC, which was found to be not sustainable by this Court, as already noted hereinabove.

8. Accordingly, I am of the view that the appeal deserves to be heard on merits. Order dated 05.07.2010 is recalled and appeal is restored to original status. Application qua the same stands allowed. I may also hasten to add here that the application herein, which has been allowed, is though styled one under Order 41 Rule 19 read with Section 151 CPC, but to my mind, Rule 19 CPC is not applicable in the present *case. However, this Court can exercise its inherent powers under Section 151 CPC to allow the application, for which detailed reasons have already been recorded.*

9. In the aforesaid premise, since the application has been allowed, the appeal is taken on record and is restored to its original status. Having perused the impugned order passed by the learned trial court, prima facie, it appears that in the absence of any application for condonation of delay, the application under Order 9 Rule 9 CPC after two years appeared to be barred by limitation, especially in the light of no explanation given in the application and/or otherwise there being any prayer in the application under Order 9 Rule 9 CPC to condone the delay. It also seems from the impugned order that no explanation, plausible or otherwise, has been offered in the application under Order 9 Rule 9 CPC by the respondent No.1 (plaintiff) seeking restoration of the suit, as to what transpired over more than two years owing to which applicants/co plaintiffs therein (respondents no.1 and 3 herein) did not take any steps earlier to seek restoration of their suit.

10. Notices were though issued to the respondents at the time of admission hearing, but being an old matter, none appears. In the interest of justice, it is directed that fresh notices in the appeal be issued to the respondents no.1 and 3 as well as their counsel who has filed power on their behalf to enable him to seek instructions. Service is permitted 'dasti' also, apart from all other permissible modes, including electronic modes viz. email and WhatsApp.

11. Post in on 02.07.2025.

12. In the meanwhile, it is made clear that since all other co-plaintiffs, except respondents no.1 and 3 herein, have already consented to withdraw their claim against the applicant, the suit proceedings shall be confined only in respect of the claim of the respondents no.1 and 3 herein. Qua the rest of the respondents herein the suit shall be treated as dismissed, as was the position prior to the filing of the application under 9 rule 9 CPC. It is also deemed appropriate that, till this court passes further orders, the learned trial court, in the meanwhile, shall adjourn the proceedings pending before it beyond the date fixed in this court."

3. Apropos, arguments have been heard today qua the maintainability of the application filed by respondent no.1 under Order 9 Rule 9 of CPC before the learned Trial Court, without seeking any condonation of delay as well as on its merits. The respondent No.3 does not seem to be interested to pursue the lis, as despite service none appeared for her either on previous hearing or even today.

4. Mr. Nishant Shah, Learned counsel for the appellant argues that the impugned order is manifestly illegal, untenable in law, contrary to record, and deserves to be set aside purely on jurisdictional grounds which strike at the very root of the matter. He submits that

restoration under Order 9 Rule 9 CPC is not maintainable where the suit was withdrawn or dismissed based on a compromise. If the compromise is alleged to be fraudulent, the remedy lies in a separate suit challenging the same. Even the Court its self explicitly observed in the impugned order that no restoration lies when the dismissal is based on an agreed compromise unless fraud is pleaded and proved in a separate substantive action. And yet, it erroneously allowed the application under order 9 rule 9 filed by the respondent no.1.

4.1. Moreover, he argues that application Order IX Rule 9 CPC was filed after an inordinate and unexplained delay of over two years from the date of dismissal of the suit on 01.06.2004, without any application for condonation of delay, and without even pleading any sufficient cause in terms of Section 5 of the Limitation Act, 1963.Such an application for restoration must be filed within 30 days from the date of dismissal, failing which, it is barred by limitation unless the delay is satisfactorily explained and condoned by the court under the Limitation Act.

4.2. Out of the nine original plaintiffs in the suit in question herein, only two (Respondent No. 1, Smt. Madhu Rathi and the Respondent No. 3, Smt. Vijaylaxmi) chose to file the application under Order IX Rule 9 CPC, challenging the alleged compromise and withdrawal of the suit. The remaining seven plaintiffs never objected, never disowned the withdrawal, and never filed any independent or joint application for restoration, a silent and telling acquiescence that the withdrawal was indeed as per their will and instructions.When seven out of the nine co-plaintiffs acquiesce and do not join the proceedings for its reversal, the legal presumption is of implied consent or at least no objection.

4.3. He would further urge that suit was validly withdrawn by the plaintiffs through their duly appointed counsel Sh. Loonkaran Purohit. The Respondent No. 1 had also lodged a Complaint before the Bar Council of Rajasthan alleging that her Advocate Loonkaran Purohit had withdrawn the suit without her consent. The Bar Council, after full adjudication, dismissed the complaint recording cogent findings viz. that the advocate acted only on instructions of Power of Attorney Holders (Mr. Devendra Jain and Mr. Ratan Patwa); he never filed any direct Vakalatnama of the plaintiffs; affidavits of co-plaintiffs and the attorney holders confirm withdrawal was instructed by plaintiffs; the complaint was motivated and the advocate was being made a scapegoat; no misconduct was found and complaint was dismissed.These findings have attained finality. Respondent No.1 is now barred from re-litigating the same factual issue in a different forum by raising a similar plea of unauthorized withdrawal.While Devendra Jain was power of attorney holder of all the plaintiffs in the suit in question herein, whereas, Ratan Chand Patwa, husband of Respondent No. 2 herein (co-plaintiff in suit) was the Power of Attorney holder for 63 other plaintiffs in related suits involving similar issues and properties. Devendra Jain and Mr. Ratan Chand were, therefore, central representatives of a larger body of similarly situated plaintiffs. He would submit that the power of attorney holder of all the nine plaintiffs Devendra Jain also deposed before the Bar council that he had duly instructed the advocate of plaintiffs to withdraw the suit in view of compromise. Thus, the decision to withdraw the suit was part of a deliberate, authorized and widespread consensus, and not an isolated or unauthorized act.

5. Whereas, Mr. C.P.Soni, learned counsel appearing for respondent No.1 would argue that the application filed by respondent No.1 under Order 9, Rule 9 CPC is very much maintainable. He relies on the contents of said provision. He states that in terms thereof and in light of the reasons stated in the application under order 9 rule 9 filed by respondent no.1, the same has been correctly allowed.

5.1. He further argues that the only remedy available to the respondent No.1 was to file an application under Order 9, Rule 9 CPC against recalling of the decree & judgment dated 18.04.1996.

6. Having heard the rival contentions and after perusal of the impugned order, I shall now proceed to deal with the same and render my opinion by recording reasons in the succeeding paragraphs.

7. First and foremost, pertinent it is to note that impugned order primarily premised on the reasoning that the then counsel for all the co-plaintiffs, Shri Purohit, did not submit any written instructions from any of the plaintiffs along with the application indicating that they had consented to the withdrawal of the suit or that they had instructed him to do so. The application under order 9 rule 9 for withdrawal based on compromise was filed on 01.06.2004, and the suit was dismissed. Trial court observed that no affidavit was filed by Advocate Shri Purohit to the effect that was withdrawing the suit based on the instructions of the plaintiffs. No signature of any plaintiff is present on the court's order sheet. No evidence was produced to show that plaintiffs received any money as part of the compromise. Thus, it formed the opinion that the suit was dismissed through withdrawal without any written authority. The fact that

plaintiffs did not initiate any disciplinary proceedings before the Bar Council against their then counsel does not imply that their applications should be dismissed. Trial court also held that since the suit was dismissed as withdrawn in presence of the counsels for the parties and in view thereof, provisions of Order 9 Rule 9 of CPC are not attracted. It also held since section 151 was being invoked, there is no limitation applicable on the inherent powers of the court. Therefore, invoking Section 151 CPC, the suit was found to be fit for restoration qua the two applicants.

8. The facts and reasoning recorded in the impugned orders which are based on the pleadings of the parties do not reflect that either the issue of complaint before the bar council filed by the respondent no.1. (co-plaintiff) was raised before the learned trial court or pleaded either in the application under order 9 rule 9 or even in the reply filed to the same. On a query posed to the learned counsel for the appellant qua the same, he would candidly submit that, at the relevant time, appellant was not aware of pendency of the bar council proceedings and or institution of the same. However, respondent no.1 deliberately concealed this significant information from the trial court during the order 9 rule 9 Proceedings. On the ground of suppression and concealment and having not approached the trial court with clean hands and; on count concealment even at this stage from this court by respondent No.1, the instant appeal ought to be allowed by setting aside the impugned order, he would urge. Though the arguments addressed on this point have been noted, but concededly, for whatever reason, the same were neither raised nor subject matter of adjudication before the learned trial court.

9. Be that as it may, there are other sufficient reasons from which it appears that the learned trial court misdirected itself in allowing the application of the respondent No.1 as well as respondent No.3. Let us see how.

10. In the course of hearing, application filed under Order 9 Rule 9 CPC has been handed over by learned counsel for the appellant, which is taken on record, translation of which (as provided) is as under:-

> *"1. That the petitioner along with respondents No 1 to 8 had filed a suit regarding the cancellation of decree dated 18.04.1996, declaratory decree, and permanent injunction, etc., wherein proceedings were ongoing in this Court under the same. The said case was registered as Civil Original No 282/04 titled "Sunita vs. Pushpchand" before this Hon'ble Court.*
> *2. That on 05.07.2006, the petitioner inquired from her counsel about the proceedings of the said original suit. The counsel informed the petitioner that the said case had already been dismissed on 01.06.2004*
> *3. That thereafter, the petitioner appointed another advocate and filed an application on 06.07.2006. On 04.08.2006, she inspected the file of the original case, and on 05.08.2006, she applied for a certified copy, which was received on 14.08.2006 containing the order dated 01.06.2004.*
> *4. That no compromise of any kind took place between the petitioner and respondents No. 9 to 12 (the defendants in the original suit), nor was any compromise submitted before the Hon'ble Court. The petitioner did not give any instruction or intimation for withdrawal of the said suit. No withdrawal application was filed by the petitioner, nor does the said application bear the petitioner's signature. Due to the next date of hearing being fixed as 05.06.2004 by the Hon'ble Court, the petitioner (plaintiff) could not appear on the date of hearing.*
> *5. That under the above circumstances, the petitioner desires to get the original suit restored and to proceed with the case Non-restoration of the case would cause irreparable loss to the petitioner.*
> *6. That the only reason for restoration is to revive the original suit Therefore, it is humbly prayed that this Hon'ble Court may kindly be pleased to pass an order for restoration of the decided case, Civil Original No. 282/04 titled "Smt Sunita & Others vs Pushpchand& Others" decided on 01 06.2004."*

11. The suit was dismissed on 01.06.2004 on the basis of an application for withdrawal submitted by the plaintiffs' counsel. Out of the nine plaintiffs, only two—namely, Smt. Madhu Rathi (Respondent no.1) and Smt. Vijay Laxmi (Respondent no.3)—filed two separate

applications for restoration. The remaining seven plaintiffs neither objected to the withdrawal at any time nor have raised any grievance since. The logical inference is that the withdrawal was undertaken on the collective instructions of the plaintiffs, or at the very least, with their knowledge and tacit consent.

12. Even now, it's so appears that respondent no.3, once again, is not interested to pursue the lis and has abandoned her cause, since, despite service, none appears for her, even though she had preferred an independent application under Order 9 Rule 9 seeking restoration of the suit, which was allowed vide the impugned order herein. Same is another indicator that the co-plaintiffs are approbating and reprobating, as per their convenience.

13. The question, whether or not the contesting respondent No.1 herein (co-plaintiff) knew prior to 21.08.2006 about the withdrawal and dismissal of the suit on 01.06.2004 and/or the said fact was in her special knowledge, needs to be addressed before arriving at any conclusion. The appellant (defendant in the suit) had no means and measures to negate the claim of the respondent No.1 about her lack of knowledge.

Moreover, nothing was placed on record of the trial court by the respondent No.1 i.e. any previous communication qua the same between her and her counsel and / or amongst the numerous other co-plaintiffs. In such situation, a higher degree of scrutiny/caution by the learned trial court was warranted to contest the story woven by the respondent No.1 (co-plaintiff) stating that on 05.07.2006 she, as a bolt from the blue, contacted her counsel only to be told that the civil suit had been dismissed on 01.06.2004 and thus till 05.07.2006 she had no knowledge about the same. When tested on these touch stones, I find it highly implausible that the suit was withdrawn either without instructions or without the knowledge of all the plaintiffs including the respondent No.1

14. The learned Trial Court, while dealing with the restoration applications, referred to the applicants’ plea that they came to know of the dismissal only on 05.07.2006. However, it is undisputed that eight out of nine plaintiffs—including the two applicants—resided in Jodhpur, where the suit was pending. The two applicants’ claim that they came to know of the dismissal more than two years later—despite living in the same city where the litigation was pending—defies both logic and judicial expectations of diligence. Trite it may sound but the parties must demonstrate a minimum level of vigilance in prosecuting their claims. Indulgence cannot and ought not to be granted to a party which has been negligent or inactive for inordinately long period. The applicants’ (respondent no.1 and 3 herein) conduct fails this standard and reflects *culpable indifference*. It defies ordinary prudence that for over two years the applicants made no attempt to contact their counsel or co-plaintiffs regarding the progress of the case. Such prolonged inaction reflects gross negligence and absence of bona fide conduct on their part. No doubt, ordinarily, parties ought sign the compromise. However, the conduct of all the plaintiffs(including co-plaintiffs respondents no. 1 and 3 herein), coupled with long acquiesce, as already noted, is self-speaking and a direct pointer to the out of court settlement. The allegation that their advocate acted fraudulently and withdrew the suit without consent is nothing but a moonshine, taking advantage of the technicalities and a clear afterthought and that too highly belatedly. The allegation levelled against the advocate is an

afterthought prompted in all likelihood due to internal disagreements amongst the plaintiffs. Their story in the application under order 9 rule 9 thus does inspires no confidence. It does not seem to be a case where they ought to be given any advantage of their subsequent belated retraction and long acquiesce, for the same would amount to giving advantage of their own wrong.

15. Even otherwise, The executed vakalatnama generally vests the advocate with the authority to withdraw the suit. The vakalatnama executed by the plaintiffs unambiguously authorized the advocate to withdraw the suit. It is not disputed that vakalatnama was in force at the relevant time and formed the basis of the application for withdrawal. There is no evidence to suggest that the authority of the counsel was ever limited or revoked prior to the withdrawal of suit. Such authority remains valid until expressly revoked. The plaintiffs did not take any legal steps to either limit or terminate this authority, nor did they notify the Court of any restrictions. In the absence of contrary evidence, the presumption under law is that the counsel acted within his mandate. The restoration plea, therefore, cannot be entertained on vague and belated allegations of overreach.

16. Further, the impugned order is also self-contradictory regarding the timeline. It records one of the applications for restoration was filed on 01.06.2006, whereas it also notes that the applicants learnt of the dismissal of suit only on 05.07.2006 i.e. subsequent to the date of the application. Such a contradiction casts doubt on the genuineness of the restoration plea and indicates lack of due diligence in preparing the application.

17. Adverting now to view taken by Trial court qua the non-applicability of order 9 rule and thus the invocation of inherent power

under 151 and there being no limitation on the inherent power of court. Let us first have a look at the relevant provisions which for ready reference are as below :-

Order 9 Rule 9 of CPC:

> *"9. Decree against plaintiff by default bars fresh suit.*
> *(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. and shall appoint a day for proceeding with suit.*
> *(2) No order shall be made under this rule unless notice of the application has been served on the opposite party."*

Section 122 of The Limitation Act, 1963:

Description	*Period of limitation*		*Time from which period begins to run*
Article.122.	*To restore a suit or appeal or application for review or revision dismissed for default of appearance* ***or for want of prosecution*** *or for failure to pay costs of service of process or to furnish security for costs.*	*Thirty Days*	*The date of dismissal*

(Emphasis supplied)

18. In the light of the aforesaid position of law, even though the instant suit was dismissed upon withdrawal, such dismissal in my opinion, is akin to dismissal for want of prosecution, and hence the article 122 of limitation ibid applies. The suit was dismissed on 01.06.2004 and even if 05.07.2006 is taken as the date of knowledge, the restoration application filed on 21.08.2006 is clearly barred by limitation. Under Article 122 of the Limitation Act, 1963, the limitation period for filing a restoration application in a suit dismissed for want of prosecution is thirty (30) days from the date of dismissal. The trial court, while restoring the suit, failed to address this bar and misapplied the provisions of the Limitation Act.Article

122 supra prescribes a strict 30-day limit for restoration applications. Even assuming the extended date of knowledge (05.07.2006), the application filed on 21.08.2006 is clearly time-barred. Courts are bound by limitation statutes, which are enacted not merely to punish delay but to ensure legal certainty and finality. Law of limitation is founded on public policy. The Trial Court's failure to appreciate this bar has been a fundamental legal error.

19. The defendants case is that a settlement was arrived with the plaintiffs. It was pursuant to this compromise that the plaintiffs' counsel withdrew the suit. Notably, seven plaintiffs have never contested this fact. Their silence over such a material issue for over two decades supports the inference of a concluded compromise and deliberate and intentional withdrawal of the suit. The assertion by the defendants that a settlement had been reached—followed by payment and subsequent withdrawal—finds substantial support in the silence of seven plaintiffs for over two decades. Their silence, when they were neither minor nor infirm, amounts to acquiescence. Courts view long-standing silence on material issues as *tacit endorsement*. In this case, it strongly reinforces the inference that the withdrawal was a part of a concluded compromise, thereby making the attempt at restoration unjust and disruptive to settled expectations.

20. The unexplained delay of over two years by the two applicants, their failure to pursue legal remedies against their own counsel, and the complete absence of any corroborative material to support the claim of fraud all suggest that the restoration application was a belated and opportunistic attempt to reopen a settled matter.

21. It appears that after the withdrawal of the suit, some inter se dispute arose among the co-plaintiffs—either concerning the sharing of the settlement proceeds or due to other personal reasons. It is in this context that two of the nine plaintiffs sought to undo what had already been mutually accepted and finalized, thereby disturbing the finality of judicial proceedings. Restoration of suits is not a matter of right but of discretion. Such discretion must be exercised judiciously and only where there is a clear showing of *sufficient cause*, promptness, and bona fides. The applicants' inaction, obvious internal disputes among co-plaintiffs and lack of any supporting material point to an opportunistic strategy to revive litigation for extraneous collateral reasons. Courts must guard against abuse of process, particularly when the object seems to disturb a settled compromise or resurrect stale claims. The finality of judicial orders is an essential principle in the administration of justice. Permitting restoration applications, based on speculative claims and showing utter lack of due diligence as in this case, would erode this principle and open the floodgates to endless litigation. Procedural rules are no doubt handmaidens of justice, but at the same time, they are not to be sacrificed at the altar of unending indulgence. The applicants' attempt to reopen the suit runs counter to this principle.

22. To sum up the discussion, it is held as below :

i. The restoration application was clearly barred by limitation under Article 122 of the Limitation Act; The delay in filing the restoration application is *substantive and fatal*, not merely technical.

ii. The plaintiffs’ conduct reveals a lack of due diligence, deliberate ostensible negligence and bona fides;

iii. There was no evidence of fraud or deception on the part of their advocate;

iv. The silent acquiescence of the majority of plaintiffs *affirms the legitimacy of the withdrawal*; Seven out of nine plaintiffs acquiesced in the withdrawal, reinforcing the conclusion that the withdrawal was lawful and consensual;

v. The trial court committed a serious legal error in ignoring the statutory bar of limitation and restoring the suit without adequate grounds.

23. As an upshot, the appeal is allowed. The impugned order dated 01.05.2008 passed by the learned trial court is set aside and the applications under Order 9 Rule 9 CPC filed by respondent Nos.1 and 3 stand dismissed.

24. The original suit No.282/2004 thus stands disposed of in terms of the judgment & decree already passed but respondents No.1 and 3 are at liberty to seek remedy to assail the same in accordance with law.

25. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA),J

464-AK Chouhan/-

Whether fit for reporting : Yes / No