IN THE HIGH COURT OF JHARKHAND, RANCHI

C.M.P. No. 1054 of 2026

Shyam Nandan Kumar Sinha, aged about 65 years, son of late Govind Prasad Ambastha, resident at present of Mohalla Krishnapatti,PO, PS and District Jamui, Bihar

.... Defendant/ J.Dr./ Petitioner

-- Versus --

1.Krishna Kant Bihari Sinha

2.Ramakant Bihari Sinha

3.Shivakant Bihari Sinha

4.Vishnu Kant Bihari Sinha,

No.1 to 4 sons of late Nagendra Bihari Sinha, resident of Quarter No.B-486, IInd Floor,Sector-3, PO and PS Dhurwa, District Ranchi

5.Sanjay Kant Sinha, son of S.K.B Sinha

6.Nayan Kant Sinha, son of S.K.B. Sinha

Nos.5 and 6 resident of Quarter No.B-67 (T), near Montessori School Ground, PO Dhurwa, PS Jagannathpur, District Ranchi ***..... Plaintiffs/ D.Hr./ Opposite Parties***

7.Ramnandan Sinha, son of late Govind Prasad Ambastha, resident of Mohalla Vidyapuri, PO Jhumritilaiya, PS Tilaiya, District Koderma

8.Dayashankar Prasad Sinha, son of late Govind Prasad Ambastha, resident of Mohalla Jaipur Dhanki, PO Pahari PS Agamkuan Kumrar, District Patna

9.Dhananjay Kumar Sinha, son of late Govind Prasad Ambastha, resident of Flat No.B-405, Patliputra Heritage, East Patliputra Railway Station, Gandhi Nagar Ashiyana, PO and PS Gandhi Nagar, District Patna

10.Manju Kumari Sinha, wife of Jay Prakash Narayan, resident

of Postal Park, Road No.4, PO and PS Kankarbag, District Patna

11.Anita Kumari Sinha, wife of Kashi Nath Prasad, resident of Rupas Colony, PO Pahari, PS Agamkuan Kumrar, District Patna

.... Defendants/ J.Dr./ Proforma O.P.

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner(s) :- Mr. Bhaiya Vishwajit Kumar, Advocate
For the Respondent :- ------

5/08.10.2026 This petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 08.04.2026 passed by learned Civil Judge (Sr.Div.)-I, Koderma in Restoration Case No.01/2024 whereby the learned court has been pleased to reject the recall petition dated 01.04.2026 filed on behalf of the petitioner for recall of the order dated 10.12.2024 whereby the restoration proceeding has been fixed *ex-parte* and proceeded with the hearing of restoration case.

2. Mr. Bhaiya Vishwajit Kumar, the learned counsel appearing on behalf of the petitioner submits that the plaintiffs/ D.Hr/ O.P. have filed Execution Case No.5/1994 for execution of the decree passed in Title Suit No.28/1984 against Govind Prasad Ambastha (since deceased) father of the petitioner and has failed to comply the order of the executing court for service of notice as such the same stood dismissed in default by order dated 08.12.2023. He next submits that the O.Ps have filed the Restoration Case No.1 of 2024 for restoration of Execution Case No.5 of 1994 in which the learned executing court has

passed the order for taking steps for service of notice upon the substituted judgment debtor-petitioner, however no notice in restoration case has been served upon the petitioner at any point of time and in that background the petitioner has filed the petition dated 01.04.2026 to recall the order dated 10.12.2024 which was rejected by the learned court by the impugned order dated 08.4.2026. He next submits that the petitioner has not received any notice in restoration case and the learned court has wrongly passed the order and in view of that, the impugned order may kindly be set aside.

3. The order dated 10.12.2024 is annexed as Annexure-1 whereby the *ex-parte* proceeding of the restoration case has been fixed.

4. On perusal of the said order, it transpires that notice/ summons have been issued to the O.Ps for appearance in the said execution case, however, the O.Ps have not appeared and thereafter the paper publication was also made on 12.09.2024 in daily Newspaper "Prabhat Khabar" and in spite of that, the petitioner-herein has not appeared before the learned court and in that background, the *ex-parte* proceeding was fixed.

5. Thus, it is an admitted position that the notice was issued upon the petitioner and the petitioner has chosen not to appear in the restoration case and thereafter the petition has been filed for recall of the order dated 10.12.2024.

6. In this background, the learned court has rightly held that

the judgment debtor always used all the tactics so that the decree could not be executed and at a very belated stage the said petition has been filed and in view of that he has been pleased to reject the said petition.

7. The Court finds that notice was already issued upon the petitioner and even the paper publication was made, however, the petitioner was not chosen to appear and the petitioner is the judgment debtor.

8. In the light of the provisions contained in Order IX and the law discussed hereinabove, it can be safely concluded that in case of dismissal of suit under Order IX Rule 4 CPC the plaintiff has both the remedies of filing of fresh suit or application for restoration of the suit. If he chooses one remedy, he is not debarred from availing himself of the other remedy. Both these remedies are simultaneous and would not exclude either of them." That aspect has been further well-settled in light of Privy Council judgment rendered in the case of ***Govind Prasad v. Har Kishan (Weir, J.), AIR 1929 Allahabad.***

9. In view of the above facts, reasons and analysis, the Court finds that the learned court has rightly passed the order, and as such, this petition being C.M.P. No.1054 of 2026 is, hereby, dismissed.

10. It is open to the petitioner herein to appear in the pending execution case and make out his case.

(Sanjay Kumar Dwivedi, J.)

Dated : 08.10.2026
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