
(1989) 10 P&H CK 0079
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3870 of 1986

Bishnu Bhagwan and Others

APPELLANT

Vs

Bani Madho Saran and Others

RESPONDENT

Date of Decision : 24-10-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 8

Citation : (1989) 10 P&H CK 0079

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : Ajay Lamba, for the Appellant;

Judgement

J.V. Gupta, J.—This petition is directed against the order of the Additional District Judge, Narnaul "dated 30.5.1986 whereby the order of the trial Court dated 7.1.1981, dismissing the application for restoration of the suit under Order 9 Rule 8 CPC was maintained.

2. The plaintiffs Mahesh Dass and others filed an application for restoration of the suit. The suit was pending for statement of Morari Lal alone as the remaining evidence was already recorded. He could not appear on the date fixed as, he suffered an attack of cardiac asthma on 22.6.1972 and therefore, could not appear on the note fixed i.e. on 24.6.1972, when the suit was thus dismissed in default. An application for restoration was filed within limitation on 14.7.1972, alleging that the non-appearance of Morari Lal was not intentional and therefore, prayed for restoration of the suit. That application was contested on behalf of the respondents. The trial Court framed the issues and allowed the parties to lead evidence. It is most unfortunate that the said application remained pending for nine years and was ultimately dismissed by the trial Court on 7.1.1981. As a matter of fact, the application for restoration could be disposed of on affidavits alone and there was no necessity of recording the evidence. It was all the more so when the application was admittedly filed within 30 days of dismissal in default. The matter did not end here. Even in appeal it took five years to dispose

of the same and the learned Additional District Judge dismissed the same on the ground that the plaintiffs have not been able to point out any illegality or infirmity in the order of the trial Court.

3. In this Court as well it took three years for service of the respondents as they are many in number.

4. This has been repeatedly held by this Court the restoration of a suit dismissed in default should not be denied simply because the plaintiffs have failed to prove strictly sufficient cause for their non-appearance. It was held in *Buta Singh v. Puro and another*, 1979 PLJ 259 that ordinarily if the application is made within limitation, the same had to be restored and for the negligence on behalf of a party the other party can be compensated with costs. Similar view was taken in *Avtar Singh minor etc. v. Bhajan Singh etc.*, 1978 PLR 103. Present is a case which shows that the Courts did not apply their judicial mind and acted in routine and that is why it took about nine years in the trial Court for disposal of this application for restoration and again five years in appeal. On the facts and circumstances it was a fit case to be restored immediately. On the basis of the affidavit filed by the plaintiff. The view taken by the Courts below is wholly illegal and arbitrary. The Courts have thus acted illegally and with material irregularity in the exercise of its jurisdiction. Consequently the petition succeeds. The impugned orders are set aside and the application for restoration is allowed with no order as to costs. The parties are directed to appear in the trial Court on 22.11.1989. The hearing of the suit be expedited and in case the parties want to produce any evidence, the same will be produced at their own responsibility. However, Dasti summons be given under Order 16 Rule 7-A C.P.C, if so required.

5. In order to avoid any further delay, notice will be given to the counsel for the defendants who appeared in the trial Court and in case he refuses to accept then notice be sent only to those defendants who were contesting the suit at that time. The defendants who were proceeded ex-parte need not be served with any fresh notice.