

(1998) 12 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Criminal No. 132/95

Hans Raj Master

APPELLANT

Vs

Narain Singh

RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 9 Rule 3

Citation : (2000) KashLJ 45 : (1998) SriLJ 346

Hon'ble Judges : M.Y.Kawoosa, J

Bench : Single Bench

Judgement

1. This revision petition emanates from the order of learned Sub Judge (CJM) Doda dated 26.07.95 whereby application of the petitioner for

restoration of civil suit titled above was dismissed in default.

2. Briefly put, the suit of the plaintiff for declaration has been dismissed in default on 4.5.95. The application was filed for its restoration on

25.05.95 and the same was dismissed for nonprosecution on 26.07.95 In this revision petition, the petitioner has urged that the Presiding Officer of

the Court did not wait for a day or two though the plaintiff/petitioner appeared same day in the court in the morning hours. The case was not called

at that time. He went to Tehsildar's office and when he returned, he found that his application was dismissed. His plea is that in the ends of justice,

the court should have waited sometime for the petitioner or at lest till the rising of the court

3. Heard the petitioner in person and learned counsel appearing for the respondents No. 9 and 11. Counsel for the respondents has contended

that no illegality has been committed. Law provides for the dismissal of the case for non appearance of plaintiff or the petitioner as the case may be.

I have gone through the file. The application was filed on May 25, 1995 and was posted for 24.06.95 on which date the petitioner plaintiff was present and the case was adjourned to July 26, 1995 on which date the petitioner was not present and the application for restoration was dismissed in default. So admittedly, the court has not waited for a day or two for the petitioner nor has waited till the rising of the court. Though the Civil Procedure Code provides for such dismissal, but at the same time, it is appropriate for the ends of justice to wait for some time or one or two days so that the petitioner gets another opportunity to present himself. It has been seen that at times exigencies are such which duly warrant for the nonappearance of the petitioner. It is in this background, High Court Circular No. 57 dated 15.02.1934 was issued which enjoins upon the Presiding Officers of the court to wait for one or two days for the petitioner or the plaintiff as the case may be. If the petitioner does not turn up again then to take recourse for dismissing the case in default. This court also has allowed the revision petition titled Hans Raj Vs;. Pararnjit Singh (SLJ 1979 155) against the dismissal for nonappearance of plaintiff and has held that court should have waited for one or two days to comply the aforementioned High Court Circular. Apart from this, in the present case, the petitioner has filed transfer application before this court on May 8, 1995 which was pending before the High Court and the petitioner had the impression that there is no need to pursue the case in the lower court.

4. For these reasons, therefore, and in the ends of justice, the revision petition is allowed and the case is sent back to the trial court with direction to dispose of the application for restoration afresh in accordance with law. The parties are directed to appear before the Court of learned Sub Judge (CJM) Doda on Dec. 24, 1998. The record of the trial court be sent back forthwith.