

(1988) 11 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1799 of 1988

Jagir Singh

APPELLANT

Vs

Punjab and Sind Bank and others

RESPONDENT

Date of Decision : 08-11-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1988) 11 P&H CK 0025

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : B.R. Mahajan, for the Appellant; Harinder Singh, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—This revision petition is directed against the order dated 5.5.1988 passed by the learned Sub Judge Ist Class, Tarn Taran. He dismissed an application filed by Defendant No. 1, the Petitioner, u/s 151, CPC (for short "the Code") for review of its order dated 12.2.1988.

2. The facts in brief are that the Bank, Respondent No. 1, filed a suit for recovery of Rs. 2,86,477 58 against the Petitioner as the principal debotor and Respondents Nos. 2 and 3 as the guarantors. On an earlier date, the Petitioner and Respondent No. 2 had not appeared and the case had been adjourned to 12.2.1988 subject to payment of Rs 50/-as costs. The case was fixed for that date for admission or denial of documents and framing of issues. On 12.2.1988 Respondent No. 2 appeared. He paid his half share of the costs amounting to Rs. 25/- and he admitted or denied the documents on the record. The Petitioner, however, did not appear nor costs were paid on his behalf by his counsel. The learned trial Court, therefore, struck off his defence u/s 35-B of the Code. The court proceeded to frame as many as 13 issues arising out of the pleadings of the parties and fixed the case for evidence for 16.3.1988.

3. In the instant application, the Petitioner averred that he is in service. He had

applied to the Works Manager, under whom he is working, for grant of leave for 12.2.1988 as his personal presence in the Court was necessary to admit or deny the documents. His application for leave was, however, declined by the Works Manager on 11.2.1988. For this reason, neither he could appear in person in the Court nor could he contact his counsel. While rejecting the application of the Petitioner, the learned trial Court has observed that there was sufficient time for him to obtain leave or else he could instruct his counsel to pay the costs but the version of the Petitioner that he applied for leave and the same had been declined has not been disbelieved.

4. I am of the considered view that on 12.2.1988 the personal presence of the Petitioner was necessary as he was required to admit or deny the documents placed on the record by the Bank. It can be reasonably deduced from the circumstances that he was not anticipating any impediment in his presence in Court on that date. That is why he did not contact his counsel earlier to instruct him to pay the costs in his absence.

5. The suit filed by the Bank is for recovery of a huge amount. The Petitioner is the principal debtor. In his absence it shall not be possible to adjudicate a number of issues which have been framed in the case and quite likely the guarantors would be handicapped in their defence. Costs are the panacea in the case of default on the part of a party of the kind as is in the present case. I, therefore, consider it in the interest of justice that the Petitioner should be allowed to enter his defence subject to payment of costs.

6. Consequently, I allow this revision petition and set aside the impugned order dated 5.5.1988 passed by the learned Sub Judge Ist Class, Tarn Taran. I allow the application of the Petitioner. He is allowed to enter upon his defence. The order by which his defence was struck off u/s 35 B of the Code is set aside subject to payment of Rs 50/- as costs in addition to Rs. 25/- which he was to pay on the adjourned date of hearing, i. e 12.2.1988. There shall, however, be no order as to costs so far as this revision petition is concerned.

7. It has been stated at the Bar that the case in the trial Court is already* fixed for hearing. The Petitioner shall pay the cost on that date. He shall admit or deny the documents if necessary. The issues shall be amended or recast in view of the defence raised by him in his written statement.