

(1989) 08 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1675 of 1988

M/s. Mani ram Badri Parsad, Commission Agent Mandi
Dabwali

APPELLANT

Vs

M/s. Lachhman Dass Sri Kishan and another

RESPONDENT

Date of Decision : 08-08-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35(B)

Citation : (1989) 08 P&H CK 0024

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

Bench : Single Bench

Advocate : N.K. Kapoor, for the Appellant; G.C. Garg with Mr. K.L. Malhotra, for the Respondent

Judgement

J.V. Gupta, J.—This petition is directed against the order of the trial Court dated 6th June 1988 striking off the defence u/s 35(B) of the CPC was recalled and the time for payment of costs by the Defendant was extended.

2. Plaintiff filed this suit on 13th October, 1987 for recovery of Rs. 79268.50 Paise. In that suit the Defendants failed to file written statement inspite of several adjournments and also failed to pay costs Their defence was struck off u/s 35(B)(2) vide order dated 27th January 1988 when the case was adjourned to 28th April, 1988 for Plaintiff's evidence. On 25th April, 1988. i.e. three days prior to the date fixed, Defendants moved an application for setting aside the order dated 27th January 1988. The said application was resisted by the Plaintiff However, the trial Court found that the Defendants were ready to pay the costs imposed by the Court but the same could not be paid due to the alleged strike of the advocates. Thus, according to the trial Court, this shows that there was no fault on the part of the Defendants for non-payment of the costs. This was a sufficient ground to set aside the earlier order dated 27th January 1988.

3. After hearing the counsel for the parties, I do not find any justification for interference in the impugned order in the revisional jurisdiction and, therefore,

the revision petition is dismissed.

4. However, the delaying tactics on the part of the Defendants are very much evident. Since the suit is for recovery of a heavy amount, the Defendants are delaying the same for one reason or the other. It is, therefore, directed that the Defendants will lead their evidence at their own responsibility as and when called upon to do so. Apart from that, they will be allowed to file written statement now on payment of Rs. 500/- as costs because of the unnecessary delay caused by them. Their counsel was wilfully absent on the date fixed and, therefore, this by itself was no ground for not paying the costs. However, since the Defendants are suffering on account of the conduct of their advocate, they will be well advised to realise the costs or to take any other proceedings against their advocate.

5. Since the operation of the impugned order was stayed by this Court, the parties are directed to appear in the trial Court on 31st August, 1989. On that day, cost of Rs. 500/- will be paid and the written statement will be filed by the Defendants.