

(1986) 03 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2207 of 1985

M/s Punjab Khadi Gram Udyog Board, Chandigarh	APPELLANT
Vs	
M/s Ram Kishan Carding Factory Panipat and another	RESPONDENT

Date of Decision : 10-03-1986

Acts Referred:

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

Citation : (1986) 03 P&H CK 0002

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

Bench : Single Bench

Advocate : A.S. Cheema and Mr. Baljinder Singh, for the Appellant; V.K. Jain, for the Respondent

Judgement

J.V. Gupta, J.—This petition is directed against the order of the Additional District Judge, Karaal, dated 5th March, 1985, whereby the order dismissing the application for restoration of the suit was maintained in appeal.

2. Brief facts are that M/s. Punjab Khadi Gram Udyog Board, Chandigarh, filed a suit for possession and mandatory injunction against the three Defendants. The said suit was filed on 31-8-1978. On 18-10-1979, the case was adjourned for summoning Defendant No. 3 on filing process-fee for 24-11-1979. On 24-11-1979 Shri R. S. Jindal Advocate appeared for Defendant No. 1 and Shri H.K. Singal appeared for Defendant No. 2 but none appeared on behalf of the Plaintiff and as such the suit was dismissed in default under Order 9 Rule 8 of the Code of Civil Procedure. The Plaintiff-Board filed the application for restoration on 12-2-1980 alleging that on 28-2-1979 the suit was fixed for appearance of the Defendant but on that day the learned Presiding Officer was on leave and so the Reader of the Court adjourned the suit to 18-10-1979. On that date, neither the Plaintiff nor its counsel appeared and inadvertently the presence was recorded by writing "present as before" and the case was adjourned on 24-11-1979 for summoning the remaining Defendant Since the Plaintiff or his counsel did not appear oh 18-10-1979 so it had no knowledge that the suit had been adjourned

to 24-11-1979 for summoning Defendant No. 3. In the circumstances, the suit was wrongly dismissed in default on 24-11-1979, as it was incumbent upon the Court to issue notices on 18-10-1979 for 24-11-1979. When Defendant No. 2 started raising construction on 7-2-1980 on a portion of the suit land, a report was lodged in the police station and there Defendant No. 2 showed a copy of the Court order dated 24-11-1979 vide which the suit was dismissed in default. Thus the file was got inspected on 11-2-1980 and then necessary application was moved the next day on 12-2-1980. The application was contested inter alia on the ground that it was barred by time and that the Plaintiff as well as its counsel were present on 18-10-1979 when the case was adjourned to 24-11-1979. The learned trial Court found that the application was barred by time and there was no sufficient ground for restoration of the suit. Consequently the application was dismissed. In appeal, the learned Additional District Judge affirmed the said findings of the trial Court. Dissatisfied with the same, the Plaintiff has filed this petition in this Court.

3. The learned Counsel for the Petitioner contended that Shri Rizak Ram Advocate was the Senior counsel for the Plaintiff but he was appointed as a Minister on 28-7-1979 and thereafter Shri Raj Kumar Advocate of Sonapat attended the case pending in the Court at Panipat. On 4-8-1979 the Presiding Officer was on leave and the case was posted for proper orders on 17-8-1979. Raj Kumar Advocate has appeared as witness as A.W. 2 and he has stated that on 4-8-1979 he asked Shri Raj Pal Advocate to attend the case and inform him about the next date. Shri Raj Pal Advocate has also appeared as A.W. 4 and he has stated that since the brief had been taken away by Shri Raj Kumar Advocate he could not appear. Thus argued the learned Counsel that on 18-10-1979 the presence of the counsel as "present as before" was wrongly recorded and that is why the next date fixed on that date i.e. 24-11-1979 was not known to the Plaintiff. According to the learned Counsel, the whole approach of the courts below in this behalf was wrong, illegal and misconceived. The Plaintiff could not be allowed to suffer on account of the negligence of its counsel, if any, On the other hand, the learned Counsel for the Defendant-Respondents submitted that on the appreciation of entire evidence it has been concurrently found that there was no sufficient ground for restoration and, therefore, that being a finding of fact could not be interfered with in revisional jurisdiction. In support of his contention he referred to The The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, . According to the learned Counsel, the Plaintiff has failed to prove its bona fides for its absence on 24-11-1979 when the suit was dismissed in default.

4. I have heard the learned Counsel for the parties and have also gone through interim orders passed by the Court and the two statements of two Advocates Shri Raj Kumar and Shri Raj Pal.

5. Admittedly, the suit when it was dismissed in default was only For the service of Defendant No. 3. It is not disputed that in the interim orders passed by the

trial Court the name of the counsel has not been given. It is in the order dated 17-2-1979 that the name of the counsel Shri Dewan Singh Advocate is given as counsel for the Plaintiff. Later, in all the orders it is written that "present as before". In those circumstances, it could not be said that who was present for the Plaintiff on 18-10-1979 when the case was adjourned for 24-11-1979. Prior to that, the Presiding Officer was on leave. Under these circumstances, the Plaintiff or his counsel should have been given a notice for the next date of hearing. Moreover, as observed earlier, the suit was only for summoning Defendant No. 3 and there could not be any malafide on the part of the Plaintiff for not appearing on that date if the date would have been known to them. Since the consequences of the order "dismissed in default" are very vital and the Plaintiff is debarred to file a fresh suit, the suit should have been restored on payment of costs, if any, for the negligence of the counsel for the Plaintiff. Since the courts, below have acted illegally and with material irregularity in the exercise of their jurisdiction causing failure of justice, it is a fit case where the application for restoration is to be allowed on payment of costs. Consequently, this petition succeeds, the impugned orders are set aside and the application for restoration of the suit is allowed on payment of Rs. 500/-as costs. This amount will be paid by Sh. Raj Kumar Advocate Sonapat the counsel for the Plaintiff in the trial Court for whose negligence all these proceedings have been pending for about seven years. The parties have been directed to appear in the trial Court on 7th April, 1986. Record of the case be sent back forthwith.

6. It is further directed that the parties will lead their evidence in the suit at their own responsibility in order to expedite its disposal, though dusty summonses may be given to them, if so desired, as contemplated under Order 16 Rule 7-A of the Code of Civil Procedure.