

**(1981) 08 P&H CK 0040**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 981 of 1976**

Nar Singh Dass Khosla

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision :** 25-08-1981

**Acts Referred:**

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

**Citation :** (1981) 08 P&H CK 0040

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

**Bench :** Single Bench

**Advocate :** M.L. Sarin, for the Appellant; B.S. Wasu, Advocate for A.G. (Pb.), for the Respondent

**Final Decision :** Allowed

## Judgement

J.V. Gupta, J.—Plaintiff-petitioner has filed this revision petition against the order of the Additional District Judge, Jullundur, dated February 7, 1976, whereby the order of the trial Court dismissing his application under Order IX, Rule 9 for restoration of the suit was maintained.

2. Plaintiff-Petitioner filed a suit for declaration and possession relating to 209 Kanals 7 Marlas land situated in village Umrewal, Tehsil Nakodar, District Jullundur, against the Union of India, State of Punjab and others alleging that the land in question was never an evacuee property and it cannot vest in defendants No. 1 to 3, as the plaintiff had completed his title after the period of limitation for redemption of the mortgage by the Muslim evacuee in his favour. The suit was pending for the evidence of the defendants, when on November 22, 1972 it was dismissed under Order IX Rule 8 of the Code of Civil Procedure, as the plaintiff failed to appear on the date fixed. Earlier date was October 25, 1972, on which date the defendant was to produce its evidence, but the case was adjourned for November 22, 1972, at the request of the counsel for the defence. An application for the restoration of the suit was filed on December 2, 1972 alleging that the counsel Shri Hans Raj Sharma, Pleader of Nakodar had directed one Shri

Surinder Singh Clerk of Dewan Chuni Lal Sahni, Advocate, of Jullundur to request the Court through Dewan Chuni Lal Sahni to take up the case after lunch, when Shri Hans Raj Sharma, counsel for the plaintiff hoped to reach Jullundur after attending his case at Nakodar and in case he could not reach Jullundur after lunch, Shri Surinder Singh was to request Dewan Chuni Lal Sahni to appear on his behalf as he had been doing earlier. It is further alleged that on the date fixed Shri Hans Raj Sharma could not reach Jullundur and Shri Surinder Singh forgot to request his Advocate to attend to this case This application was contested on behalf of the defendant-respondents and on the pleadings of the parties the following issue was framed:-

Whether there are sufficient grounds for the restoration of the suit of the applicant?

The trial Court after going through the evidence and hearing the counsel for the parties dismissed the application as it came to the conclusion that no sufficient ground has been made out for restoration of the suit. In appeal the finding of the trial Court has been maintained by the learned Additional District Judge Feeling aggrieved against this, the plaintiff has come in revision to this Court.

3. Learned counsel for the petitioner contended that the whole approach of the Courts below is illegal and the learned Additional District Judge has acted illegally and with material irregularity in the exercise of his jurisdiction. It has been brought to the notice of this court that there is an application dated March 20, 1974, filed on behalf of the plaintiff in which a prayer was made for additional evidence. This application was filed by the plaintiff through Shri Hans Raj Sharma, Pleader, Nakodar. He has also brought to the notice of this Court that there is affidavit of Shri Hans Raj Sharma, Pleader, Nakodar, in which it has been stated that he had asked Shri Surinder Singh Clerk to request the Court through his own Advocate to take up the case after lunch, so that he (Shri Sharma) could reach Jullundur. But on that date he could not reach and the suit was dismissed in default. There is also a detailed order of the trial Court dated May 8, 1974, whereby the said application for additional evidence was dismissed. In that order it has been observed by the trial Court that the counsel for the plaintiff, who wants to appear in the witness box, has still not withdrawn from the case, nor the plaintiff has, engaged any other counsel. After going through these documents and the impugned order I find that no mention has been made of these documents in the impugned order. On November 22, 1972, the case was fixed for evidence of the defendant, which date was fixed at the instance of the counsel for the defendants. The plaintiff had already closed his evidence In these circumstances it was a fit case that the suit would have been restored by the trial Court It has been repeatedly held by this Court that unless there has been gross negligence on the part of the party, he should not suffer for the negligence, of his counsel, particularly when the counsel has filed an affidavit explaining his difficulty in not attending the case on a particular date The Courts below have thus acted illegally and with material irregularity in the exercise of their

jurisdiction. In any case the suit could be restored on payment of cost, as the cost is always a panacea for all ills in civil litigation.

4. Consequently this petition succeeds, the orders of the Courts below are set aside and the application for restoration of the suit is allowed on payment of Rs. 300/- as costs. The parties through their counsel have been directed to appear before the trial Court on September 21, 1981. The record of the trial Court be sent forthwith.