
(1990) 05 P&H CK 0085
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3669 of 1989

Oriental Bank of Commerce	Vs	APPELLANT
Hukam Chand and Others		RESPONDENT

Date of Decision : 03-05-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1990) 98 PLR 582

Hon'ble Judges : N.C. Jain, J

Bench : Single Bench

Advocate : A.K. Chopra, for the Appellant;

Judgement

N.C. Jain, J.—This revision petition has been directed against the order of the trial Court, dated 28th August, 1989, by which the Subordinate Judge I Class, Samana had refused to res(SIC)ore the suit against defendant Nos. 9 and 10, which was dismissed earlier on 10th August. 1989. The order dated 10th August, 1989 is to the effect that defendant Nos. 9 and 10 were not served as Munadi charges were not deposited and the copies of the plaint were also not Sled. The suit against defendant Nos. 9 and 10 was, consequently, dismissed, as has been observed. Since the rest ration application was dismissed, the Bank has filed the revision petition before this Court.

2. It has been argued by Mr. A. K. Chopra, learned counsel for the petitioner Bank that the petitioner's counsel remained under a wrong impression that the Munadi charges, which were deposited four times by the Bank in the Court at Patiala before transfer of suit to Samana, were sufficient to serve defendant Nos. 9 and 10, as those Munadi charges were not consumed. It has further been argued that until and unless the Munadi charges were not deposited with any ulterior motive, the suit should normally be not dismissed on account on non-deposit of Munadi charges and in any case the order dismissing the suit must be held illegal. For the above proposition, the learned counsel has drawn support from the observations made by this Court in the State of Punjab and Anr. v.

Gama 1985 87 P.L.R. 706.

3. After hearing the learned counsel for the petitioner, I am of the view that the order dismissing the application for restoration is unsustainable for more than one reasons. Admittedly, the suit against defendant Nos. 1 to 8 is still pending and the case is to proceed on merits. Secondly, nothing is wrong with the explanation that the counsel remained under a wrong impression that Munadi charges which were deposited in the Court at Patiala, would be consumed by the Court at Samana to whom the case was transferred. In any case, there cannot be any ulterior motive for the Bank to delay the hearing of the suit by not depositing the Munadi charges as the suit for recovery of the amount has been filed by the Bank itself. The plaintiff Bank does not want to delay the case and any lapse on its part cannot be said to be of such a grave nature that the plaintiff should not be allowed restoration of the suit.

4. For the reasons recorded above, the impugned order dated 28th August, 1989, is hereby quashed, the application for restoration is allowed, and the trial Court is directed to serve defendants No 9 and 10 and then proceed with the trial of the suit in accordance with law. The trial Court, would, in addition to effecting Munadi, serve defendants No. 9 and 10 in the ordinary course as well as by sending registered covers. Dasti process would also be issued.