

(1998) 02 J&K CK 0029
In the Jammu And Kashmir High Court
Case No : Civil Revision 26 Of 1997

Paramjit Singh

APPELLANT

Vs

Ajit Singh

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 9, 9

Citation : (1998) KashLJ 464

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Vikram Dogra, Karanjit Singh, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, Judge.

1. Heard learned counsel for the parties and have gone through the records of this case.

2. Facts which are not in dispute are as under

A suit was filed by the respondent (hereinafter referred to as the plaintiff) for permanent prohibitory injunction, whereby a decree was prayed for

restraining the petitioner (hereinafter referred to as the defendant) from evicting him from the premises in question, save and except in accordance

with law. This matter was pending before the court below and on 2.1.1997 it came to be dismissed in default for appearance of the plaintiff, when

learned counsel for the defendant was present.

3. Parties are further not at variance that no application was filed on behalf of the plaintiff in accordance with the provisions of Order 9 Rule 9 Civil

Procedure Code, for setting aside the dismissal of suit and for restoration thereof. It was pointed out by Shri Singh, learned counsel appearing for

the defendant that restoration could not be ordered unless notice of application was served upon his client by the trial court and thus, according to him, trial court has acted with material illegality while exercising jurisdiction in passing the impugned order, whereby suit of the plaintiff has been ordered to be restored.

4. At this stage, submission urged on behalf of plaintiff needs to be noticed. Shri Dogra pointed out that ordinarily in the prelunch session, courts in the state normally undertake criminal work and civil work is taken up in the postlunch session. Immediately after the suit had been dismissed in the default at about 1.30 P.M., he went a short while thereafter, put in his appearance and made an oral request to the Presiding Officer for restoration of the suit, although neither the defendant nor his learned counsel was present. It was in this background that the suit came to be restored, which order is questioned by the defendant in this revision petition.

5. So far the power to restore the suit, which was dismissed in default for appearance of the plaintiff is concerned, it vests with the court, which passed dismissal order. The only thing which needs to be examined by the said court is whether the plaintiff has been able to make out a sufficient cause for his nonappearance when the case was called for hearing and on being satisfied while setting aside the dismissal, upon such terms as the costs or otherwise, the trial court shall appoint a day for proceeding with the suit. Before passing an order under subRule(1) of Rule 9 of Order 9 Civil Procedure Code, law enjoins a duty upon the trial court to serve a copy of an application for restoration upon the opposite side, that had not been done in the present case,. It appears, that learned counsel for the plaintiff in his wisdom thought that oral prayer made was enough without application being filed. This practice is neither warranted by law nor it meets the rigours of Order 9 Rule 9(2) Civil Procedure Code.

6. In this view of the matter the objection urged on behalf of defendant deserves to be upheld and it is ordered accordingly.

7. As a consequence of the above, impugned order passed by 2nd Civil Sub Judge Jammu on 2.1.1997, ordering restoration of suit titled: Ajit Singh Vs. Paramjit Singh, is hereby set aside. It is made clear that merely because the impugned order is set aside, will not be a bar and/or shall not preclude the plaintiff from filing an application afresh for restoration of the

suit in accordance with law and by making out a proper case for setting aside the order of dismissal of the suit. As and when such an application is filed, trial court would consider the same in accordance with law and without being, in any manner, prejudiced by the order of date in this revision petition.

8. Revision petition stands disposed of accordingly.