

(1980) 07 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 73 of 1974

Shri Sanatan Dharam Mahabir Dal (Regd.) Bhatinda	APPELLANT
Vs	
M/s Bharat Motor Company Bhatinda	RESPONDENT

Date of Decision : 17-07-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 3

Citation : (1980) 07 P&H CK 0003

Hon'ble Judges : D.S. Tewstia, J

Bench : Single Bench

Advocate : S.P. Gupta, for the Appellant; Jagdish Singh and Mr. J.L. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewstia, J.—These two revision petitions Nos. 73 and 74 of 1974 are directed against an indential order dated 28th August 1973 dismissing the application of the Plaintiff Petitioner for restoration of the suit which was dismissed in default by order dated 30th April 1971. Since an identical question of law is involved, therefore, a common order is proposed for both the revision petitions

2. On the date of the order of dismissal dated 30th April, 1971, none of the parties, or their counsel, was present and the Court passed the following order ;

None is present. (sic) is 3.30p.m. The case has been called many times. It appears that the parties are not interested in he suit. The same is hereby dismissed for default. File be consinged to the record room Announced.

Where neither party appears when the suit is called on for heating, the Court may make an order that the suit be dismissed.

Order Rule 4, CPC Code, envisages that where a suit is dismissed either under Rule 2 or Rule 3, then two options are open to the Plaintiff can file a fresh suit if

the limitation is available to him and (2) he may apply for setting aside the order of dismissal if he satisfies the court that there was sufficient cause for his non-appearance. In the present application, it was mentioned that Shri Banarsi Dass Goyal, Secretary, Shri Sanatan Dharam Sabha, Bhatinda the Plaintiff -for some reason, was out of station on 30.4.1971 and his counsel being busy in some other Court could not appear in the Court in question.

3. Learned Counsel for the Petitioner cites *Gourlal Mitra Vs. Sm. Hara Sundari Paul*, in support of his contention that where the cause shown in the application for restoration of the case was that party's counsel was busy in some other Court and that averment was not denied by the other side, then it would be a good case for restoration of the case and recalling of the order dismissing the suit in default.

4. The ratio of this decision is not applicable to the facts of the present case. In that case, the Court in which the counsel was busy was mentioned, but in the present case the party had made a vague allegation that he had come to know that his counsel was busy in some other Court. He had neither disclosed his source of information nor the name of the Court in which his counsel was busy. In the circumstances, the other side could not be in a position to rebut these allegations. However, from the evidence led by both the sides, it does appear that the parties had entered into a compromise and the Defendant Respondent herein had agreed to the enhancement of the rent, provided the suit was not dismissed and it was in pursuance of that compromise that neither the Plaintiff and his counsel nor the Defendant and his counsel appeared in the Court in the given date and thus the suit was get dismissed. However, it appears that the Defendant resiled from the said compromise and that led to the effect to get the case restated. The parties cannot take the Court for a ride and abuse the process of the Court. In my opinion, the trial Court rightly refused to restore the case on the ground that no satisfactory cause had been shown for the restoration of the case.

5. Mr. S.P Gupta sought to argue that where a case is dismissed under order 9, Rule 3, CPC Code, it is not necessary even to give notice of the restoration application to the other side even if it is so, makes no difference, because it is the Court that has to be satisfied regarding the sufficiency of cause, in the present case, the application being vague, the counsel having not filed his affidavit indicating as to in which Court he was busy and the party not having disclosed the name of the Court in which he was busy, the Court below rightly came to the conclusion that no sufficient cause had been shown.

6. For the reasons aforementioned, these revisions (Civil Revisions Nos. 73 and 74 of 1974) are dismissed but with no order as to costs.