

(1995) 01 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3381 of 1994

The State of Punjab and Others

APPELLANT

Vs

Jagtar Singh and Others

RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 21, 115

Citation : (1996) 1 CivCC 24 : (1995) 109 PLR 744

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : Parminder Singh, AAG, for the Appellant; A.S. Jattana, for the Respondent

Judgement

Ashok Bhan, J.—Facts giving rise to this revision petition filed by the petitioner-defendant (hereinafter referred to as the petitioner) are as under:-

2. Plaintiff-respondent (hereinafter referred to as the respondent) filed a suit for declaration to the effect that his name is liable to be entered at serial No. 8 in the seniority list of Assistant Soil Conservator Officer and that he be given the deemed date of promotion as Assistant Soil Conservator Officer w.e.f. 11.5.1971 with all consequential benefits.

3. During the pendency of the suit, respondent filed, an application under order 11 rule 14 & 15 of the Code of Civil Procedure, for production of certain documents. Reply to the said application was filed. Later on, another application was filed by the respondent for giving better particulars. Reply to the said application was not filed in spite of eight opportunities having been granted to the petitioner. Since the petitioner failed to file better particulars in spite of eight opportunities as having been granted to it, the trial Court struck off the defence of the petitioner. This presumably has been done under order 11 rule 21 C.P.C. although it is not so mentioned in the order.

4. Petitioner has come up to this Court with the grievance that the order of that

trial Court is sketchy and that the defence of the petitioner could not be struck off by the Court suo moto and the same could only be done on an application filed by the opposite party.

5. Notice of motion was issued. Respondent has put in appearance. Counsel for the parties have been heard. I find substance in the submission made by the counsel for the petitioner. Order 11 of Rule 21 C.P.C. reads as under:-

"21. Non-compliance with order for discovery: -

(1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) xx xx xx"

6. A perusal of this rule clearly demonstrates that the Court could not take suo moto action to strike off the defence of the defendant on its failure to comply with the order of the Court to answer interrogatories, or for discovery or for inspection of the documents. The order could only be passed on an application made by the opposite party. On the application filed notice had to be issued to the parties and the order passed after giving reasonable opportunity of being heard for this, I draw support from the view taken in Mrs. Namita Dhar Vs. Dr. Amalendu Sen, where a Division Bench of the Calcutta High Court held as under:-

"Though order 11 Rule 21 is in two parts and the first part provides for a liability of the plaintiff to have his suit dismissed and the liability of the defendant to have his defence struck out on refusing to reply on interrogatories and the second part provides that the party asking for the interrogatory may apply on the Court and obtain the order to that effect, the Court by itself has no power to dismiss the suit or strike off the defence as the case may be without any such application by the other party."

Since in the present case, the trial Court has struck off the defence of the petitioner suo moto, therefore, this revision petition is allowed and the impugned order of the trial Court is set aside. The case is remitted back to the trial court to proceed further in accordance with law. Defendant-petitioners are directed to furnish better particulars on the next date of hearing which is being fixed before the trial Court for appearance. Parties through their counsel are directed to appear before the trial Court on 8.2.1995. Since the petitioner failed to file the better particulars in spite of eight adjournments granted to it, it is burdened with Rs. 1000/- as costs which the petitioner shall tender before the trial Court on the date fixed to be paid to the plaintiff-respondents.