
(1985) 04 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 763 of 1985

United Commercial Bank

APPELLANT

Vs

M/s A.K. Machine Tools, Batala and others

RESPONDENT

Date of Decision : 08-04-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 25B

Citation : (1985) 1 RCR(Rent) 529

Hon'ble Judges : G.C. Mital, J

Bench : Single Bench

Advocate : J.C. Arora, for the Appellant; D.V. Sehgal and Mr. B.R. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

G.C. Mital, J.—After hearing the Learned Counsel for the parties I am of the view that this revision deserves to succeed.

2. On 19th September, 1984 the case was adjourned to 27th October, 1984 to enable the Plaintiff-Bank to lead evidence on payment of costs imposed on that date and on the previous hearing. On 27th October, 1984, the learned Judge was on leave and the case was fixed for proper orders and on 5th November, 1984 the Court ordered that the Plaintiff should produce his evidence on 13th December, 1984. When the case was taken up on 13th December, 1984, It was found that the Plaintiff was not ready with its evidence and at that stage the Defendants pointed out that they had filed an application on 28th September, 1984 u/s 25-B, of the CPC thereafter Called "the Code"), for closing the Plaintiff's evidence for want of payment of costs. The trial Court adjourned the case to 18th December, 1984 to enable the Plaintiff to file reply to that application and ultimately by order dated 22nd February, 1985 the Defendants application was allowed and the Plaintiff's evidence was closed for want of payment of costs u/s 35 B, of the Code. This is Plaintiff's revision against the aforesaid order.

3. On 19th September, 1984 the Plaintiff was to tender the cost for leading evidence since evidence was not present, adjournment was sought. That adjournment could be opposed by the Defendants by saying that unless costs are paid no adjournment should be granted. They could also show that no case for grant of adjournment was made out. Nothing of the sort was done and instead the Court adjourned the case for Plaintiff's evidence to 22nd October, 1984 on payment of additional Costs and it was ordered that on the adjourned date of hearing the Plaintiff would pay the total costs. It is thereafter that they filed an application u/s 35-B, of the Code which remained pending but in the meantime the Court again gave opportunity to the Plaintiff by order dated 5th November, 1984, to produce its evidence on 13th December, 1984. Again on 13th October, 1984 it was open to the Defendants to press for the closing of the Plaintiff's evidence because several opportunities had already been granted and no case for adjournment was made out. They could also press that order should be passed u/s 35-B of the Code for non payment of costs. If this had been done, I have no doubt, the Court would have passed order on one prayer or the other on that very date. Instead, request was made for deciding application on 28th September, 1984. Accordingly, I take it that the Defendants waived the point on 27th October, 1984 and again on 5th November, 1984. Therefore, in view of *Prem Sagar v. Phul Chand* (1983) 85 P. L. R. 797, the Court below erred in taking action u/s 35 B of the Code. Since order of the Court below, is in excess of Jurisdiction and in any case would cause manifest injustice to the Plaintiff, the order dated 22nd February, 1985 is hereby set aside and the court is directed to proceed with the matter in accordance with law.

4. If request is made for taking action u/s 35-B of the Code, that should be decided forthwith and that is the precise purpose, for which Section 35 B has been enacted. The trial Courts are committing serious errors in not deciding the matter u/s 35 B. whenever it is raised before them and the effect to adjourn case for filing of reply etc should be avoided as far as possible, because the facts would be seen from the orders passed by the Court and it would only be in a rare case that a reply would be called for. Not following the correct procedure may not mean injustice only to the Plaintiff but in certain cases it may mean injustice to the Defendant because they may have legitimate point to raise and if Court does not decide it forthwith, it will be taken that they have waived the point.

5. The revision stands allowed and the parties through their counsel are directed to appear before the trial Court on 29th April, 1985.