

Ran Singh and ors. Vs. Girdhari

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Court : Punjab and Haryana

Decided On : Apr-21-2004

Reported in : (2004)137PLR463

Judge : N.K. Sud, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rules 2 and 4

Appeal No. : Civil Revision No. 1587 of 1983

Appellant : Ran Singh and ors.

Respondent : Girdhari

Advocate for Pet/Ap. : H.S. Giani, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

N.K. Sud, J.

1. This civil revision is directed against the order passed by the Sub Judge, Ist Class, Gurgaon, dated 14.3.1983 dismissing the application of the petitioners for setting aside order dated 31.1.1983.

2. The suit of the petitioner was dismissed on 31.1.1983 under Order 9 Rule 2 Code of Civil Procedure in consequence of the petitioner's failure to file the summons required for service of the defendant for various dates fixed for hearing. The petitioner filed application dated 31.1.1983 for setting aside the impugned order stating as under;

'1. That the above mentioned case is pending in this Hon'ble Court since 20.4.1981 and which was fixed for today i.e. 3.1.1983.

2. That the plaintiff/applicant have been submitting the summons for service of the defendant on each and every date of hearing in this Hon'ble Court, but the service of the defendant could not make on the summons.

3. That in the case file the entries of the summons has not been made for the last four/five hearings, so the case has been dismissed on this basis alone. This is bonafide mistake.

It is, therefore, requested that the above case may kindly be heard and the order passed by your honour be set aside.'

3. The trial Court dismissed this application on the ground that no sufficient cause had been shown by the petitioner for failure to file the summons and that there was nothing on record worth the name to show that there was a bonafide mistake on the part of the applicant in not filing the summons.

4. I have heard the counsel for the petitioner and also perused the records of the case. A perusal of the zimini order shows that the matter was taken up for the first time on 3.6.1981 and summons were ordered to be issued to respondent for various dates. Finally on 14.12.1982 following order was passed.:-

'deft be summoned on filing of PF and summons within seven days for 31.1.1983'.

5. Counsel for the petitioners has not been able to dispute that no process fee or summons were filed by the petitioner in compliance with the above mentioned order. On the other hand, the application filed by the petitioner dated 31-1-1983, which was already been reproduced in full above shows that the petitioner made a

wrong claim before the trial Court that he had been submitting summons for service 'on each and every date of hearing.' It is thus clear that he was claiming setting aside of the order on the ground that he had submitted summons in compliance with the order dated 14.12.1982 also. This claim is totally false as per the admitted position. In this factual background if the application is considered, it is clear that there is no explanation whatsoever for not filing the summons and process fee for 31.1.1983, An order passed under Order 9 Rule 2 CPC can only be set aside if the applicant is able to satisfy the Court that there was sufficient cause for failure as referred to in Rule 2 of Order 9 CPC. As has already been observed, there was no such explanation whatsoever tendered before the trial Court. Thus in my view, no case for setting aside of the order dated 31.1.1983 has been made out.

The Civil revision being devoid of any merit is dismissed. No costs.

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