

Hirda Ram Vs. Narinder Singh

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Court : Punjab and Haryana

Decided On : Sep-21-1993

Reported in : (1993)105PLR682

Judge : V.K. Jhanji, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 8

Appeal No. : C.R. No. 2834 of 1982

Appellant : Hirda Ram

Respondent : Narinder Singh

Advocate for Def. : C.B. Goel and; Rajinder Goel, Advs.

Advocate for Pet/Ap. : V.B. Aggarwal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.K. Jhanji, J.

1. In this revision petition, the order impugned is declining of prayer of the plaintiff (petitioner herein) for restoration of the suit which was dismissed on 27.12.1978.

2. In brief, the facts are that the petitioner filed a suit for possession by pre-emption of land measuring 14 Kanals 18 Marlas, which was purchased by the defendants (respondents herein) for a total consideration of Rs. 20,000/-. The suit was filed on 9/13/4-1978. On one date of hearing i.e. 6.12.1978, the case was adjourned to 27.12.1978 for filing of written statement by the respondents. On 27.12.1978, the suit was dismissed in default because of non-appearance of the plaintiff or his counsel. An application for setting aside the order dated 27.12.1978 was filed on 3.1.1979. In the application, it was stated that the counsel wrongly noted the date as 3.1.1979, and also informed the plaintiff accordingly. When the plaintiff came to the Court on 3.1.1979, on enquiry, he found that his case had already been dismissed in default on 27.12.1978. On the same very date, i.e. 3.1.1979, plaintiff made an application for restoration of the suit. The application, on contest, was dismissed by the Trial Court and in appeal, the said order was affirmed by the District Judge. This order is now being impugned by the plaintiff by way of present revision petition.

3. Learned counsel for the petitioner contended that the petitioner should not be made to suffer because of mistake of the counsel, and particularly if an application for restoration of the suit was made within time. For this, he placed reliance upon judgment of this Court as *Hukmi Rai v, Rattan Chand*, 1987 P.L.J. 350. *Atma Ram and Ors. v. Molu Ram*, 1991(1) RRR 285 and *Asha Bhardwaj v. Maharaj Kishan*, 1991(2) RRR 164.

4. In reply, learned counsel for the respondent contended that this Court should not interfere in revision particularly when the suit of the plaintiff is to pre-empt the sale of the year 1978.

5. Having heard the learned counsel for the parties, I am not inclined to interfere in the orders of the Courts below. There is no dispute with the proposition of law as laid down in the aforesaid judgments that the party should not be made to suffer if on date the counsel does not appear for one reason or the other normally, an application for restoration of the suit, if filed within time, should be allowed, without recording any evidence, on payment of costs, if any. However, in the present case, I find that the trial Court framed issues, '(1) whether there was sufficient cause for

the non-appearance of the plaintiff and when the suit was called for hearing and dismissed OPP, (2) Relief.' After recording evidence, the trial Court did not agree with the contention of the plaintiff that there was a mistake on the part of the counsel regarding the date of hearing and, therefore, the trial Court held that his absence was wilful and deliberate and he had no intention to prosecute the case. In appeal, this finding was challenged before the District Judge, Karnal, who again on appreciation of evidence on record, disbelieved the plaintiff. While holding this, the District Judge also took into consideration that previously too, the suit was dismissed, in default, but on an application made by the plaintiff, the same was restored. In this view of the matter, I am not prepared to take a different view from the one taken by the Courts below, while exercising the revisional jurisdiction.

6. Consequently, there being op merit in the revision petition, the same is dismissed as such. However, there shall be no order as to costs.

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