

Amar Singh Vs. Labh Singh

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Court : Punjab and Haryana

Decided On : Aug-06-1992

Reported in : (1992)102PLR544

Judge : A.L. Bahri, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13

Appeal No. : First Appeal From Order No. 494 of 1991

Appellant : Amar Singh

Respondent : Labh Singh

Advocate for Def. : S.C. Chhabra, Adv.

Advocate for Pet/Ap. : Sandeep Punchhi, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

A.L. Bahri, J.

1. Defendant Amar Singh has filed this appeal against order of the appellate Court dated September 22, 1990 vide which application for restoration of the appeal, dismissed in default, was rejected.

2. Labh Singh plaintiff filed a suit for recovery of Rs. 5000/ and interest thereon amounting to Rs. 600/- on the basis of refund of earnest money. He also claimed future interest. The trial Court on April 25, 1985 dismissed the suit. The plaintiff filed an appeal which was allowed on November 7, 1986. The appellate Court decreed the suit for the recovery of Rs. 5600/- only i. e, future interest was not allowed. Since this judgment was delivered ex-parte, defendant Amar Singh moved an application for setting aside the ex-parte decree This application of Amar Singh was allowed by the appellate Court on April 9, 1987. The ex parte decree was set aside subject to payment of Rs. 100/- as costs. The appeal was adjourned to May 7, 1987 On that day the costs were not paid or offered. Still the appellate court adjourned the case to May 14, 1987. Neither costs were paid by Amar Singh nor he was represented on that day. The application thus stood dismissed with the result that decree passed on November 7, 1986 stood restored. Another application was filed for setting aside ex-parte order aforesaid. The application is dated May 27, 1987 on the ground that Amar Singh was ill and could not appear and secondly his counsel also could not appear as he was out of station. This application was contested by the plaintiff Labh Singh and the following issue arising out of the pleadings was framed :---

(1) Whether there are sufficient grounds to restore the application OPA.

3. Only Amar Singh appeared as his own witness as AW-1 and deposed about his illness from May 7, 1987 to May 20, 1987. He is alleged to have taken treatment from Sher Chand Hakeem who was not produced as a witness. On the other hand RW-1 Labh Singh appeared and controverted the allegations of the defendant. The appellate Court decided the issue against Amar Singh and dismissed the application as no sufficient cause was shown.

4. After hearing counsel for the parties I am of the opinion that Amar Singh defendant had tried his best to delay the proceedings in the aforesaid suit where decree had been passed against him. Not only that, he failed to pay a sum of Rs. 100/- only as costs which were imposed while allowing his application for setting aside the ex-parte decree passed by the appellate Court but he did not produce relevant evidence in support of the issue framed in spite of the fact that opportunity

was allowed on payment of Rs. 50/- as costs. It was the last order vide which costs were imposed. Although earlier on two occasions costs imposed were paid. The fact remains that Sher Chand Hakeem who is alleged to have examined the defendant Amar Singh about his sickness for the relevant period, was not produced in spite of opportunities having been allowed. Then it was the statement of Amar Singh alone which was to be taken into consideration and the lower appellate court rightly chose not to place implicit reliance thereon.

5. Even otherwise there was no justification for allowing one after another opportunity to Amar Singh defendant in the matter of payment of costs. As already stated above, on April 9, 1987 the application was allowed subject to payment of Rs. 100/- as costs and the case was adjourned to May 7, 1987. On that day costs were not paid. Automatically application for restoration stood dismissed. The order of dismissal of the application could have been formally passed on that very day for non-payment of the costs, if at all, it was necessary. Although order dated May 7, 1987 did not show that another opportunity was allowed to Amar Singh for payment of the costs as the case was simply adjourned to May 14, 1987. On that day also neither the costs were paid nor offered. Even if there was some cause for Amar Singh not to appear in person on that day he was expected to make arrangement for sending the money to his counsel to be offered. Otherwise he very well knew that for non-payment of the conditional costs his application was to stand as dismissed.

6. Finding no merit in this appeal the same is dismissed with no order as to costs.