

(1988) 01 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1784 of 1985

United Church of Northern India,
Ludhiana

APPELLANT

Vs

Darshan Singh Anand and
Another

RESPONDENT

Date of Decision: Jan. 4, 1988

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 8

Hon'ble Judges: M.R. Agnihotri, J

Bench: Single Bench

Advocate: B.R. Mahajan, for the Appellant; A.L. Jain and Mr. G.C. Garg, for the Respondent

Final Decision: Dismissed

Judgement

M.R. Agnihotri, J.

This judgment will dispose of C.R. Nos. 1784 to 1793 of 1985 as a common question of law and fact is involved in all these petitions.

2. This petition has been filed against the order dated 29.4.1985, passed by the Senior Sub Judge, Rupnagar dismissing the application seeking restoration, of the suit dismissed in default on 27.8.1984.

3. On 27.8.1984 at 4-00 P.M.; the following order was passed by the learned Senior Sub Judge:-

27.8.84: Present: None on behalf of the Plaintiff. Counsel, for Defendant No. 1 Counsel for Defendant No 1. No PW is present, nor the Plaintiff himself is present. Case called several

times. It is 4 P.M., The suit is dismissed in default under order 9 Rule 8 CPC File be consigned to record. Announced. Sd/- S.S.J. Rupnagar

27.8.1984.

The application for restoration of the suit was made on the very next day i.e. 28.8.1984, in which Shri Atma Ram, the authorised agent of the Plaintiff applicant-Church stated that he was present in the Court when the case was called, but as his counsel was not present in the Court he went to contact him. In the meantime, the case was again called and dismissed in default. It has further been alleged that the counsel had gone out for some personal work otherwise he was present in the Court premises and had come to the Court many times during the day in connection with other cases. It was also stated that witnesses to be examined in the case were also present when the case was dismissed in default.

4. The application was contested in which the allegations were denied. It was pleaded that the case was rightly dismissed in default at late hours at 3.50 P. M; as the Plaintiff-applicant did not appear and deliberately absented from the Court. The learned Senior Sub Judge dismissed the application for restoration of the suit disbelieving the version of the Plaintiff-applicant.

5. Even if the Plaintiff-applicant failed to satisfy the Court with regard to the correctness of the assertions made in the application, the Court ought to have restored the suit on payment of heavy costs, especially when the application for restoration of the suit was made on the very next day. It has been held by the Supreme Court in [Rafiq and Another Vs. Munshilal and Another](#), , that the Courts should be slow in dismissing the cases in default, because the parties should not suffer for the inaction, deliberate omission or misdemeanor of their counsel. Consequently, this petition is allowed and the orders dated 27.8.1984 and 29.4.1985 are set aside, subject to the payment of Rs. 250/- by way of costs to the Defendants. The parties, through their counsel have been directed to appear before the Senior Sub Judge, Rupnagar, on 28.1.1988.