

**(1990) 12 P&H CK 0014**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.R. No. 3683 of 1989

Sarabjit Singh

APPELLANT

Vs

Manmohan Kaur

RESPONDENT

---

**Date of Decision:** Dec. 11, 1990

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 2, Order 9 Rule 4

**Hon'ble Judges:** J.V. Gupta, C.J

**Bench:** Single Bench

**Final Decision:** Allowed

---

### **Judgement**

J.V. Gupta, C.J.

This Petitioner is directed against the order of the trial court dated 21-4-1989, whereby the application under order 9 Rule 4 of the Code of Civil Procedure, for setting aside the order dated 7-3-1989 dismissing the suit against Defendant No. 1, was dismissed.

2. The Plaintiff filed a suit against 4 Defendants for declaration to the effect that the Plaintiff is the owner of shop in dispute. The trial court vide order dated 7-3-1989 ordered that the Plaintiff has not filed the process-fee and the register cover for the service of defendant No. I and such suit against him is dismissed in default under Order 9 Rule 2 of the Code of Civil Procedure. The Plaintiff then moved an application for setting aside the said order, which was dismissed vide order dated 21-4-1989. According to the trial court, the case has become old due to the default of the Plaintiff for filing registered cover and there was no sufficient reason for setting aside dismissal against Defendant No. 1.

3. Learned Counsel for the Petitioner submitted that twice registered cover and the process-fee was filed. It was only on one date that it could not be filed. Thus argued the Learned Counsel, that under the circumstances one more opportunity should have been allowed to file the process-fee along-with the registered cover.

4. After hearing the learned Counsel for the Petitioner. I find that the trial court has acted illegally and with material irregularity while exercising his jurisdiction. Moreover, it would have avoided the multiplicity of proceedings; if the order dismissing the Plaintiff's suit against Defendant No. 1. would have been set aside.

5. Consequently, this petition succeeds, and the impugned orders dated 21-4-1989 as well as dated 7-3-1989 are set aside.