

(1985) 11 P&H CK 0014

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

**Case No:** Civil Revision No 3254 of 1985

## Punjab And Sind Bank

APPELLANT

VS

## Bhushan Tin Box Industries and Others

## RESPONDENT

**Date of Decision:** Nov. 30, 1985

## **Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 35B

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

## Bench: Single Bench

**Advocate:** H.L. Sarin and Mr. Lakhinder Singh, for the Appellant;

## Judgement

J.V. Gupta, J.

This revision petition is directed against the order of the trial Court dated October 3, 1985, whereby the suit has been dismissed u/s 35-B of the Code of Civil Procedure, (hereinafter called the Code) on account of the non payment of the costs of Rs. 15/- awarded on December 3, 1983.

2. No one is present on behalf of Defendants-Respondent Nos 1, 2 and 7, to whom the notice of motion was issued, inspite of service.

3. The suit was filed in the year 1982 Surprisingly enough, it was still at the stage of service of the Defendants when the same was dismissed by the trial Court on October 3, 1985, u/s 35-B of the Code, on account of the non payment of the costs Rs. 5/- awarded on December 3, 1983. From the interim orders passed from December 3, 1983, when the costs were awarded upto the passing of the impugned order on October 3, 1985, no orders were passed by the trial Court on account of the non-payment of costs Therefore, if the suit was allowed to proceed till then in spite of non payment of the costs awarded, then the provisions of Section 35-B of the Code could not be invoiced after about a period of two years. It appears since the suit had become old, the trial Court found it handy to dispose it of by restoring

to the provisions of Section 35-B of the Code, vide impugned order, which is most unfortunate. The facts of the present case do not warrant the invoking of the said provisions at all.

4. Consequently, this revision petition succeeds and is allowed. The impugned order is set aside. The trial Court is directed to further proceed with the suit in accordance with law. The Plaintiff has been directed to appear in the trial Court on December, 20, 1985.