

**(2014) 01 P&H CK 0149**

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

**Case No:** C.R. No. 4510 of 1994

Veer Trading Corporation

APPELLANT

Vs

Inderjit Chopra

RESPONDENT

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**Date of Decision:** Jan. 16, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 37 Rule 3(6), Order 37 Rule 37, 115

**Citation:** (2014) 175 PLR 665

**Hon'ble Judges:** Mehinder Singh Sullar, J

**Bench:** Single Bench

**Advocate:** Dheeraj Jain, Advocate for the Appellant; Deepak Thapar, Advocate for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Mehinder Singh Sullar, J.

Concisely, the facts and material which need a necessary mention for the limited purpose of deciding the core controversy, involved in the instant revision petition and emanating from the record are that, initially, respondent-plaintiff-Inderjit Chopra (for brevity "the plaintiff") has instituted the civil suit against petitioner-defendant-Veer Trading Corporation (for short "the defendant-Corporation") for recovery, under Order 37 CPC. The defendant was duly served on 17.03.1992 through its proprietor for 26.03.1992. He did not file any application for permission to leave to defend the suit within a statutory period. According to the defendant that it has already paid an amount of Rs. 7000/- to the plaintiff and his counsel allured it to compromise the matter. Subsequently, the efforts for amicable settlement proved futile. Thereafter, the petitioner-defendant moved an application for condonation of delay in filing the appropriate application for leave to defend the suit on 03.06.1993.

2. Taking into consideration the entire material on record and admission of the defendant, the trial Court dismissed the application of condonation of delay and summarily decreed the suit for recovery of remaining amount, vide impugned judgment dated 26.09.1994.

3. Aggrieved thereby, the petitioner-defendant has preferred the present revision petition, invoking the provisions of Section 115 of the Code of Civil Procedure.

4. After hearing the learned counsel for the parties, going through the record with their valuable assistance and after considering the entire matter deeply, to my mind, there is no merit in the instant revision petition in this context.

5. Ex facie, the arguments of learned counsel, that petitioner-defendant has already paid an amount of Rs. 7000/-. The counsel for the plaintiff promised it to settle the dispute and on that account, it could not file any application for leave to defend the suit within the statutory period and since there was sufficient cause, so, the trial Court committed a legal mistake to dismiss its application for condonation of delay, are not only devoid of merits but misplaced as well.

6. As is evident from the record that the plaintiff has filed the suit for recovery of the impugned amount under Order 37 CPC. The defendant has admitted the liability and paid Rs. 7000/- to the plaintiff. It is not a matter of dispute that the defendant was served on 17.03.1992 for 26.03.1992. It did not move any application for leave to defend the suit within the statutory period. The indicated ground/explanation put forth by the petitioner to condone the long delay was that counsel for the plaintiff has allured it to amicably settle the dispute and it paid Rs. 7000/- to him in this regard. The explanation put forth by the defendant was not substantiated by any evidence of compromise. Once the defendant has admitted liability and did not move petition for leave to defend within the statutory period, in that eventuality, the trial Court has rightly decreed the suit of the plaintiff, by virtue of impugned judgment, which, in substance is as under:-

"I have heard the learned counsel for the plaintiff. As already observed summons for judgment were served upon the defendant on 6.6.1992. The application has filed on 3.5.1993 almost all months after the service of summons for judgment. Rs. 7000/- out of the suit amount has also been paid by the defendant to the plaintiff without any reservation. In fact, in case any satisfaction of the whole claim had taken place on receipt of Rs. 7000/- only by the plaintiff from the defendant during the pendency of the suit, then a written compromise should have been filed in the Court and got recorded in the Court. Accordingly, in the absence thereof, in my opinion, no ground whatsoever is made out for condonation of delay. The application of the defendant is, therefore, dismissed.

Under the provisions of Rule 3(6) of Order 37 of the CPC where the defendant fails to apply for leave to defend the suit within 10 days of the service of summons for judgment on him, the plaintiff is entitled to judgment forthwith. As such, the suit of

the plaintiff is decreed against the defendant for the recovery of Rs. 5825/- with full costs of the suit. Pendente-lite and future interest on the principal amount of Rs. 2500/- @ 12% p.a. from the date of the institution of the suit till realization of the decretal amount is also allowed. Decree sheet be prepared accordingly. File be consigned to the record room."

7. Meaning thereby, the trial Court has examined the matter in the right perspective and has recorded the cogent grounds in this respect. Such judgment, containing valid reasons, cannot legally be set aside, in exercise of limited revisional jurisdiction of this Court, as contemplated u/s 115 CPC, unless and until, the same is perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner-defendant, so, the impugned judgment deserves to be and is hereby maintained in the obtaining circumstances of the case.

8. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties. In the light of aforesaid reasons, as there is no merit, therefore, the instant revision petition is dismissed as such.