

**(1951) 07 GAU CK 0007**

**Gauhati High Court**

**Case No:** Civil Revision No. 13 of 1951

R.S.N. Co. Ltd. and another

APPELLANT

Vs

Dhirendra Krishna Paul

RESPONDENT

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**Date of Decision:** July 30, 1951

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 110

**Citation:** AIR 1952 Guw 33

**Hon'ble Judges:** T.V. Thadani, C.J; Ram Labhaya, J; Haliram Deka, J

**Bench:** Full Bench

**Advocate:** J.C. Sen, for the Appellant; P.K. Lahiri, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Thadani, C.J.

This is an application by R.S.N. Co., Ltd. and I.G.N. Co., Ltd., under the provisions of S. 110 of the Civil P.C. directed against an order dated 2-12-1950, passed by the learned Munsiff of Gauhati. The order is in these terms:

The petitioner is ready. He Is examined. It appears that he was under a bona fide mistake of fact as to the last date of his suit. The salt is restored to file with a severe warning to the plaintiff that future latches will not be condoned. None appears for the defendant. The plaintiff will pay Rs. 10 to the defendant towards costs on 4-12-50 as the petitioner has left the Court today.

2. Mr. Sen, for the petitioners, contends that the original order of dismissal of the suit passed by the learned Munsiff of Gauhati was an order which ought to be regarded as an order passed under O. 17, R. 3 of the Civil P. C and as an order under O. 17, R. 3 is an appealable order, an application under O. 9 for restoring the suit was not competent.

3. We think there is no substance in this contention. The order dated 24-4-1950 reads as follows:

Presiding Officer transferred. Defendants absent and take no steps except filing lawyer's hazira. Plaintiff prays for adjournment till 26-6-50 for peremptory hearing. Resummon absent P.Ws. P.W's present will go on P.R. of Rs. 20 each.

The order dated 26 6 1950, reads:

The defendants are ready with witnesses. They tender the evidence of the witnesses examined on commission. But the plaintiff has defaulted steps and appearance. Hence the suit is dismissed for plaintiff's default with costs.

4. Mr. Sen has invited our attention to an application made by the plaintiff upon which the order dated 24-4-1950 was passed and has contended that if the application made by the plaintiff is read with the order, the order must be construed by an order made under O. 17, R. 3.

5. In the first place, we doubt that the order dated 24-4-1950 was passed by the presiding officer in Court. It expressly states that the presiding officer has been transferred. Apparently the proposed order was written out by some clerk or an officer of the Court and then initialed by the presiding officer. In these circumstances we do not think it would be proper to make use of the contents of the application made by the plaintiff for adjournment in construing the order dated 24-4-1950.

6. Moreover, there is nothing to show on the face of the order that the case was adjourned at the request of the plaintiff for any of the purposes mentioned in R. 3 of O. 17. The order merely says that the suit was adjourned for peremptory hearing. The fact that the learned Munsiff, who passed the order dated 26-6-1950, dismissed the suit for default, also tends to show that the order made on 24 4 1950, was not an order made under O. 17, R. 3 .

7. In this view of the matter, the learned Munsiff had jurisdiction to pass the order which he did on 26-6-1950 dismissing the suit for default of the plaintiff within the meaning of O. 9. It follows that the learned Munsiff to whom the application for restoring the suit was made had jurisdiction to dispose of it according to law. It is not suggested that the learned Munsiff has acted in the exercise of his jurisdiction illegally or with material irregularity.

8. We, accordingly, dismiss the revision petition with costs. Plaintiff's fee assessed at Rs. 34.