

**Saudagar Singh v. Executive Officer, Municipal Committee, Tappa  
and others (M. M. Punchhi, J.)**

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Course, there was no prohibition for provisional admission of the candidates to B.Ed. Correspondence Course who had taken B.A. Final Examination and their result had not been declared. Furthermore, if such candidates could get admission in the said course there was no reason why candidates who had taken B.A. Final Examination in April and were placed in compartment in one of the subjects could not get admission as students were not required to attend the entire session for B.Ed. Correspondence Course personally and they were to get the lessons by post in instalments on deposit of requisite fees. During this session, such of the students could not be denied the benefit of passing B.A. Final Examination, held in September (Supplementary Examination). By passing B.A. Final Examination in Supplementary Examination, for all intents and purposes, they would be eligible to take B.Ed. Final Examination (One Year Course) in April next.

(16) For the reasons recorded above, all the writ petitions are allowed with no order as to costs directing the respondents to regularise the admission of the petitioners in B.Ed. Correspondence Course and to declare their result as they have taken the final examination which is being held.

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P.C.G.

*Before : M. M. Punchhi & Ujagar Singh, JJ.*

SAUDAGAR SINGH,—*Petitioner.*

*versus*

EXECUTIVE OFFICER, MUNICIPAL COMMITTEE, TAPPA AND  
OTHERS,—*Respondents.*

*Civil Revision No. 160 of 1988.*

11th July, 1989.

*Civil Procedure Code, 1908 (Act V of 1908)—Order 9, Rule 13—  
Setting aside of ex-parte decree—Non-appearance of counsel due to  
lawyer's strike—Discretion of Courts—Curtailment in such discre-  
tion—Whether amounts to strangulating justice.*

*Held*, that to say, non-appearance of the parties or their counsel on the day lawyers go on strike resulting in dismissal of the suit or appeal is a valid ground for restoration, is not a statement of law, and no Court can rule it so. Equally to say, non-appearance of the parties or their counsel on the day lawyers go on strike resulting in dismissal of the suit or appeal would not be a valid ground for restoration, is also not a statement of law which a Court can give as a rule. The law on the subject provided in the Code of Civil Procedure is by itself enough when lot of residue and discretion has been left to the Courts to do what is considered right. Our Courts by their long experience know how to achieve that object. Any inroad to curtail their discretion in that regard would strangle justice.

(Para 5)

*Petition under Section 115 CPC, for revision from the order of the Court of Shri Bhagwan Singh Additional District Judge Barnala dated 15th October, 1988 reversing that of Shri D. R. Arora PCS, Sub Judge 1st Class, Barnala dated 28th September, 1987 allowing the appeal and ordering that the ex parte decree passed against the defendant-appellant is set aside and the learned trial court is directed to proceed with the case in accordance with law and also directing the parties to appear in the trial Court on 24th October, 1988.*

*Claim : Application for setting aside the ex parte decree dated 27th January, 1986.*

*Claim in Revision : For reversal of the order of the lower appellate Court.*

G. S. Dhillon, Advocate, for the Petitioner.

Ram Lal Gupta, Advocate, for the Respondents.

#### JUDGMENT

*M. M. Punchhi, J. (oral)*

(1) This revision petition was admitted by A. L. Bahri, J. The Hon'ble Judge simultaneously recorded that one of the questions arising in the case was of great importance i.e. whether non-appearance of the parties or their counsel on the day lawyers go on strike resulting in dismissal of the suit or appeal would be a valid ground for restoration. Two decisions of this Court, reference of which is being made hereafter, were said to be conflicting on that question. He thus proposed that the matter be considered by a larger Bench. On such recommendation and under orders of Hon'ble the Chief Justice, this petition has been fixed before us.

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(2) In *S. Maharaj Baksh Singh v. Srimati Charan Kaur* (1), S. S. Sodhi, J. was dealing with a petition of a seasoned member of the Punjab and Haryana High Court Bar Association, seeking expunction of some remarks made against him by the Motor Accident Claims Tribunal in relation to his non-appearance in a case on the day when lawyers had gone on strike. The Hon'ble Judge observed that counsel's abstaining from appearing in Court cannot but be construed as being contrary to the manner and norms of the great and noble profession of practice of law. He further observed that there is no provision in law for a Court working day to be deemed a holiday if the members of the Bar decide to stay away from appearing in Court. Yet further, he observed that Courts are duty bound to proceed according to law regardless of the absence of counsel. The views of the Tribunal making remarks against counsel for his non-appearance were given a tacit approval. Despite such expression of views, the petition was allowed on the ground that the lapse on the part of the lawyer was his first and he was a young lawyer on the threshold of his career, which facts deserved the impugned remarks to be waived lest they operate to his prejudice in his profession in the years to come. S. S. Sodhi, J. was wrongly advised with regard to the age of the lawyer concerned or to his being on the threshold of a career. The said lawyer is no stranger to this Court and the years he has spent in the legal profession are well known. His appearance as a lawyer are a matter of record. See two reported Full Bench cases of mid sixties; *The Northern India Transporters Insurance Company Limited v. Smt. Amra Watti and another* (2), and 1966 P.L.R. 528, bearing the same title. As said before, the petition was allowed but in these circumstances.

(3) G. C. Mittal, J. in *Tek Chand v. Makhan Singh* (3), was required to examine a matter in which a suit was dismissed in default and restoration sought on the ground that the lawyers were on strike. The plaintiff's application for restoration had been dismissed and he was in revision in this Court, seeking restoration. On behalf of the respondent, *S. Maharaj Baksh Singh's* case (supra) was cited in defence and to that G. C. Mital, J. reacted that S. S. Sodhi, J. had taken rather a stringent view regarding the strike of the

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(1) 1986 (2) P.L.R. 179.

(2) 1965 P.L.R. 386.

(3) 1987 (1) P.L.R. 365.

lawyers and he at that time was not prepared to subscribe to that view. He was rather of the view that no hard and fast rule could be laid and the matter would have to be considered in the facts and circumstances of each case. Having observed barely to that point, the discussion on the point stopped, because the respondent's counsel withdrew his objection to the restoration of the suit on account of the non-appearance of the lawyer due to strike. In that situation, the suit was restored on concession.

(4) As we view it, both the expressions of the so called statements of law in the aforesaid two cases are *en passant*. They were not the *ratio decidendi* to dispose of those respective cases. To sum up and repeat, S. S. Sodhi, J. granted the petition on spurred compassion and G. C. Mital, J. allowed the petition on bowed concession. We fail in this situation to grasp the conflict which we are supposed to resolve in these two cases. So we drop the exercise at that.

(5) To say, non-appearance of the parties or their counsel on the day lawyers go on strike resulting in dismissal of the suit or appeal is a valid ground for restoration, is not a statement of law and no Court can rule it so. Equally to say, non-appearance of the parties or their counsel on the day lawyers go on strike resulting in dismissal of the suit or appeal would not be a valid ground for restoration, is also not a statement of law which a Court can give as a rule. The law on the subject provided in the Code of Civil Procedure is by itself enough when lot of residue and discretion has been left to the Courts to do what is considered right. Our Courts by their long experience know how to achieve that object. Any inroad to curtail their discretion in that regard would strangle justice. We would thus stay our hands. For this reason the question posed by the admitting Bench is also left at that, for it is more a problem than a question. No doubt it is true that the Courts have had to face this problem in the recent past rather too frequently.

(6) For the aforesaid reasons, we send the matter back for enlistment before an Hon'ble Single Judge for disposal of this petition in accordance with law, since both learned counsel for the parties clamour that they have a case on merits and mean to argue on another date. That long debate must thus shift before an Hon'ble Single Judge of this Court. Remitted accordingly.

P.C.G.