

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.315 OF 2009
(Arising out of S.L.P. (C) No.2576 of 2007)

Ashutosh Gaur

...Appellant(s)

Versus

New Delhi Municipal Council & Anr.

...Respondent(s)

O R D E R

Leave granted.

The suit for declaration and injunction filed by the appellant was dismissed in default on the ground of non-appearance of his advocate. The petition for restoration was dismissed by the Trial Court on 14.10.2008. That order was confirmed by the Additional District Judge who dismissed the appeal preferred by the petitioner and the High Court dismissed the revision filed against appellate order. Hence, this appeal by special leave.

Having heard learned counsel for the parties and perused the records, we are convinced that in the facts and circumstances of the present case non-appearance of the advocate of the petitioner cannot be treated as intentional and the Trial Court should have restored the suit to its original file. The learned Additional District Judge and the High

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Court confirmed the order of dismissal of restoration application without properly appreciating the fact that the petitioner was not to be blamed for non-appearance of his advocate. Therefore, the impugned orders are liable to be set aside.

Accordingly, the appeal is allowed, impugned orders are set aside and the suit is restored to the file of the Trial Court which shall now decide the same in accordance with law.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
January 19, 2009.