

appears to me to be an entirely different case from the present. There is, in my opinion, a marked distinction between a case where a plaintiff wants to get time in order to produce a large body of fresh evidence to counteract evidence given by the defendant *i.e.*, where the plaintiff wants time to prepare what would be more or less a new case, and a case where, as here and in *Jhunku Lal v. Bisheshar Das* (1), a plaintiff merely wishes to give formal proof of a document. I, therefore, decline to interfere in revision, as I think that the Additional Subordinate Judge had jurisdiction to act as he did. The application is dismissed with costs.

1928

CHANDRIKA
LAL
v.
SAMI NATH.

Application dismissed.

Before Mr. Justice Weir.

GOVIND PRASAD (PLAINTIFF) *v.* HAR KISHAN AND
OTHERS (DEFENDANTS.)*

1928

April, 20.

Civil Procedure Code, order IX, rule 3—Suit dismissed and application to restore it dismissed—Competence of plaintiff to bring a fresh suit on the same cause of action.

A suit in a Court of Small Causes was dismissed because, on the date fixed for hearing, neither party appeared. The plaintiff applied for restoration of the suit; but his application was dismissed.

Held that it was competent to the plaintiff to file a fresh suit on the same cause of action. *Daya Shankar v. Raj Kumar* (2), and *Bhudeo v. Baikunthi* (3), approved.

THE facts of this case sufficiently appear from the judgement of the Court.

Munshi *Shabd Saran*, for the applicant.

Pandit *M. N. Kaul*, for the opposite parties.

WEIR, J. :—This is an application by the plaintiff in a civil suit to revise an order of the Small Cause

*Civil Revision No. 70 of 1928.

(1) (1918) I.L.R., 40 All., 612. (2) (1916) 20 Oudh Cases, 66.

(3) (1921) 63 Indian Cases, 239.

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GOVIND
PRASAD
v.
HAR
KISHAN.

Court Judge of Meerut dismissing the plaintiff's suit. The facts are these. The plaintiff, who is the applicant in these proceedings, brought a suit against the defendants, who are the respondents in these proceedings, on the 20th of May, 1927. That suit was dismissed under order IX, rule 3, in consequence of neither party having appeared when the suit was called for hearing. The plaintiff applied to the learned Judge on the 3rd of September, 1927, to have the suit restored, and the learned Judge dismissed that application. The plaintiff then brought a new suit upon the same cause of action on the 17th of October, 1927. In that suit the learned Judge has passed the following order :—

“The application for restoration was dismissed. The present suit is not maintainable. Dismissed with costs.”

In my opinion the learned Judge was clearly wrong in holding that the plaintiff was not entitled to bring a second suit, when an application to restore his first suit had been dismissed. Two authorities have been cited to me, namely, *Daya Shankar v. Raj Kumar* (1) and *Bhudeo v. Baikunthi* (2). I entirely agree with the learned Judge who decided both those cases, and I, therefore, set aside the order of the Small Cause Court Judge and direct him to proceed with the trial of the suit No. 6390 of 1927.

The application is allowed. Costs will be costs of the case.

Application allowed.

(1) (1916) 20 Oudh Cases. 66.

(2) (1921) 63 Indian Cases, 239.