

REVISIONAL CIVIL.

Before Tek Chand J.

GYAN SINGH (PLAINTIFF) Petitioner

versus

BUDHA (DEFENDANT) Respondent.

Civil Revision No. 126 of 1932.

*Indian Evidence Act I of 1872, Section 57, clause (9):
Court bound to take judicial notice of gazetted holidays—
Plaintiff not bound to point this out specifically in an appli-
cation for restoration—proper course for Court in such a case.*

The suit was dismissed in default on 30th March, 1931, and the application for restoration should have been filed on or before the 29th April, 1931. It was actually presented on the 30th April, 1931, the 28th and 29th April being gazetted public holidays. The Senior Subordinate Judge confirming the order of dismissal of the application for restoration by the trial Court, held that as no exemption on this ground was claimed in the application, as required by Order VII, rule 6, Civil Procedure Code, the Court was debarred from taking judicial notice of the fact that the 29th April was a gazetted holiday.

Held, that under Section 57, clause (9) of the Evidence Act, the Court is bound to take judicial notice of any public holidays notified in the Official Gazette, and that the plaintiff is entitled to presume that the Court would take judicial notice thereof, and he need not specifically ask for exemption in the application.

Tek Chand v. Mst. Patto (1), relied upon.

Also, that assuming the Senior Subordinate Judge to be technically right, the proper course for him was to require the plaintiff to amend the petition and not to dismiss it.

Petition for revision of the order of Lala Sakhir Chand, Senior Subordinate Judge, with enhanced appellate powers, Gujrat, dated the 7th December, 1931, affirming that of Sardar Prahlad Singh, Bindra, Sub-

ordinate Judge, 4th class, Dinga, dated the 2nd October, 1931, rejecting the plaintiff's application for restoration of the suit.

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GANESH DATTA, for Petitioner.

Nemo, for Respondent.

TEK CHAND J.—This is a petition for revision of the order of the Senior Subordinate Judge, Gujrat, confirming on appeal the order passed by the Subordinate Judge, 4th Class, Dinga, rejecting the plaintiff's application for restoration of a suit which had been dismissed in default. The learned Judge has held that the application was barred by time and that no sufficient cause for non-appearance of the petitioner on the date fixed had been shown. TEK CHAND J.

The suit was dismissed in default on the 30th March, 1931, and the application for restoration should have been filed on or before the 29th April, 1931. It was actually presented on the 30th April, 1931. It is admitted that the 28th and 29th April were gazetted public holidays. The learned Senior Subordinate Judge has, however, held that as no exemption on this ground was claimed in the application as required by Order VII, rule 6, Civil Procedure Code, the Court was debarred from taking judicial notice of the fact that 29th April was a gazetted holiday. He has accordingly held the application for restoration to be time-barred. I have no doubt that this conclusion is erroneous. Under section 57 clause (9) of the Evidence Act the Court is bound to take judicial notice of any public holidays notified in the Official Gazette, and as pointed out in *Tek Chand v. Mst. Patto* (1), the plaintiff is entitled to presume that the Court would take such notice thereof. He need not, therefore,

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have specifically asked for exemption in the application. Further, even if the learned Senior Subordinate Judge is technically right, which in my opinion he is not, the proper course for him was to require the plaintiff to amend the petition and not to dismiss it. I hold, therefore, that the plaintiff had applied within time to have the suit restored.

* * * * *

I accept the petition, set aside the order of the Courts below and direct that the suit be restored to its original number and reheard from the stage at which it was when the District Judge had transferred it to Dinga. As the respondent has not appeared to oppose the petition, I pass no order as to costs.

A. N. C.

Revision accepted.