

**HIGH COURT OF PUNJAB AND HARYANA
BENCH : HON'BLE MRS. JUSTICE ALKA SARIN
Date of Decision: 9th May 2024**

REGULAR SECOND APPEAL NO. 3347 OF 1999 (O&M)

GIAN CHAND ...APPELLANT

VERSUS

TARA CHAND AND ANR ...RESPONDENTS

Legislation:

Order XXII Rules 2-A and B, Code of Civil Procedure, 1908

Subject: Appeal against judgments of the Trial Court and the First Appellate Court dismissing the appellant's case based on absence and non-representation, involving procedural issues related to legal representation and rights of the parties when counsel withdraws.

Headnotes:

Procedural Law - Counsel's withdrawal and its effect on party representation - Counsel for the plaintiff withdrew without instructions, Trial Court decided case without notifying appellant - Held improper as per Baljit Singh v. Maya Ram [2006(4) RCR Civil 415] - The appellant should have been notified before proceeding in absence of representation - Case remanded to Trial Court for fresh adjudication - Notice to the parties mandatory when counsel withdraws without instructions. [Paras 5-8]

Jurisprudence on non-requirement of substantial questions of law for appeals elaborated in Pankajakshi (dead) through LRs & Ors. v. Chandrika & Ors. [2016 (6) SCC 157] referenced to clarify procedural requirements in the present context. [Para 9]

Decision - Remand of case to Trial Court - Given procedural improprieties and lack of proper notification to appellant following counsel's withdrawal, judgments and decrees of lower courts set aside - Matter remanded for fresh consideration in compliance with legal norms. [Para 10]

Referred Cases:

- Baljit Singh v. Maya Ram [2006(4) RCR Civil 415]
- Pankajakshi (dead) through LRs & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]

Representing Advocates:

Mr. Ravi Girdhwal, Advocate for Mr. Sanjay Mittal, Advocate for the appellant.
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ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellant aggrieved by the judgment and the decree dated 18.10.1994 passed by the Trial Court and the judgment and the decree dated 28.05.1999 passed by the First Appellate Court.
2. As per the Office report, respondent No.1 has since expired. No one has come forward to get themselves impleaded as legal representatives of deceased respondent No.1. At one stage, Mr. Ajay Jain, Advocate had put in appearance on behalf of the respondents.
3. Learned counsel for the plaintiff-appellant has referred to Order XXII Rule 2-A and B of the Code of Civil Procedure, 1908 to contend that it was incumbent on the legal representatives of deceased respondent No.1 to have come on to the record once the said respondent has died.
4. Since no one has come forward on behalf of respondent No.1 to get themselves impleaded as his legal representatives, the present appeal is being decided ex parte.
5. The short submission made by the learned counsel for the plaintiff-appellant is that the counsel for the plaintiff had filed an application for withdrawal which was dismissed by the Court and thereafter the counsel had pleaded no instructions. Once the counsel had pleaded no instructions notice should have been served upon the appellants before deciding the case on merits in the absence of the counsel.
6. Heard.
7. Once the counsel had pleaded no instructions the Court ought to have issued notice to the appellant before deciding the case on merits. This Court in the case of Baljit Singh v. Maya Ram [2006(4) RCR Civil 415] has held as under
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“6. As regards the observations of the learned Court below that there was no evidence to prove the illness for want of production of record, the learned counsel placed reliance on the judgment of this Court in *Kanshi Ram v. Haryana State and others*, 2004(4) RCR (Civil) 102 : 2004(2) Civil Court Cases 362 (P&H) wherein it was held that non-examination of doctor or Vaid in support of assertion of illness alone was not a ground to reject the explanation. It may also be noticed here that this Court also came to the conclusion that the party cannot be made to suffer for the fault of the counsel and the suit was ordered to be restored. In the present case, the order dated 6.10.1997 shows that the appellant was not present in Court when the counsel pleaded no instructions and therefore, it was incumbent upon the Court to have issued notice to the parties. Since this was not done, the order suffers from an illegality which needs to be set right. It may be mentioned here that the judgments of this Court relied upon by the counsel for the respondents are dealing with the cases in the trial Court where the party is normally required to be present and the judgments are on the facts of a particular case and cannot be applied universally as is sought to be contended by the learned counsel for the respondent.” 8. In view of the above the Trial Court ought to have called upon the appellant before deciding the case on merits.

9. As per the law laid down by a Constitution Bench of the Hon’ble Supreme Court in the case of *Pankajakshi (dead) through LR’s & Ors. vs. Chandrika & Ors.* [2016 (6) SCC 157] there is no requirement for framing of substantial questions of law in the present appeal.

10. In view of the above, the present appeal is allowed; judgments and decrees passed by the Trial Court and that of the First Appellate Court are set aside and the matter is remanded back to the successor Court of Sh. R.S. Virk, HCS, Senior Sub-Judge, Rewari for deciding the same afresh and in accordance with law. Registry to send copy of this order along with record of

the case to the Court concerned for 24.05.2024. Pending applications, if any, also stand disposed off.

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