

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CWP No.26278 of 2016
Date of Decision.09.02.2017**

Darshan Singh

.....Petitioner

Vs

State of Punjab and others

.....Respondents

Present: Mr. Baldev S. Sidhu, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.742 of 2017

Application is allowed.

Annexures P-16 to P-20 are taken on record.

CWP No.26278 of 2016

The grievance of the petitioner is that ROR pending before the Secretary, Rural Development Panchayat Department under Section 216 of the Punjab Panchayati Raj Act, 1994 was dismissed in default on 01.10.2010. The zimni orders in this regard have been annexed as Annexures P-16 to P-20 by way of misc. application, which reveal that on all dates the counsel appearing on behalf of the petitioner was present except on 01.10.2010 when the case was dismissed for default. In fact, the authority should have sent notice to the petitioner to address about the non-appearance of the counsel. There was no perpetual default. On acquiring the knowledge in 2014, application was moved in the month of June, 2014 but the same has erroneously been dismissed on the ground of delay.

Notice of motion.

Mr. P.S. Bajwa, Addl. A.G., Punjab accepts notice.

I am of the view that Courts should not have been so technical in deciding the application seeking restoration in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Rafiz and another Vs. Munshi Lal and another AIR 1981 SC 1400** as for the lapse of the counsel, the party should not be suffered.

The zimni orders commencing from 07.05.2010 to 01.10.2010 are extracted here-in-below:-

“order dated 07.05.2010

Present: Mr. Kulwant Singh, counsel for the petitioner.

Arguments on the matter of stay head. The implementation of the disputed order dated is stayed till 21.05.2010. Record be called. Case be presented on 21.05.2010.”

Order dated 21.05.2010

Present: Mr. Kulwant Singh, counsel for the petitioner.

Time of the court finished. Case is postponed on 28.05.2010.

Order dated 28.05.2010

Present: Mr. Kulwant Singh, counsel for the petitioner.

Time of the court finished. Case is postponed on dated 04.06.2010.

Order dated 04.06.2010

Present: Mr. Kulwant Singh, counsel for the petitioner.

Record be called. Case is postponed to dated 02.07.2010.

Order dated 01.10.2010

Present: None.

Case called time and again. Petitioner or his counsel did not come present. Case is dismissed in default.”

On all dates, the counsel had been appearing. If at all, the

the satisfaction regarding the perpetual default which was not, at least the matter should have been restored and heard on merits.

Mr. Sidhu, during the course of hearing, has also drawn the attention of this Court to application (Annexure P-11) whereby he has written letter to the Block Development and Panchayat Officer for withdrawing the complaint against the Sarpanch, Gram Panchayat regarding digging the earth from the common pond of village Patheri.

All these factors need to be taken into consideration/pondered upon by the authority for examining the merit of appeal.

Resultantly, the impugned order dated 24.08.2015 as well as the order dated 01.10.2010 are hereby set aside. The revision petition is ordered to be restored subject to payment of costs of ₹10,000/- to be deposited in counselling room of Mediation and Conciliation Centre which is being set up under the supervision of Hon'ble Ms. Justice Ritu Bahri. The amount shall be spent in the manner as would be directed by her Lordship.

The parties are directed to appear before the Secretary, Punjab Government, Rural Development and Panchayat Department on 28.02.2017.

(AMIT RAWAL)
JUDGE

February 09, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No