

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

**Civil Misc. No.6028-CII of 2016b in/and
Civil Revision No.1631 of 2016(O&M)
Date of decision: 13.01.2017**

Udey Singh (since deceased) through his legal heirs

...Petitioner

Versus

Dharam Singh (since deceased) through his legal heirs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Munfaid Khan, Advocate for
Mr. Amit Kumar Jain, Advocate for the appellant.

G.S.SANDHAWALIA, J. (Oral)

The petitioner-defendant no.2 is aggrieved against the order dated 17.12.2015 whereby his request for rehearing of appeal under Order 41 Rule 21 read with Section 151 CPC was rejected by the first Appellate Court.

The reasoning given by the Addl. District Judge, Jind is that the petitioner-defendant no.2 was duly represented by Sh. K.S.Malik, Advocate when the appeal was allowed on 30.7.2011. The certificate given by the said counsel that he had not appeared on behalf of the applicant was accordingly rejected while noticing that on several occasions he had appeared and therefore his attendance could not be recorded inadvertently. It was also noticed that the proxy counsel appeared on behalf of Sh. K.S.Malik, Advocate and the same could not have been done without his direction. The remedy thus was held not to be available as he had never been proceeded against *ex parte* and was being duly represented.

Resultantly on account of no sufficient cause being shown that he had been prevented from appearing, the application was accordingly dismissed. The argument raised that he had remained unserved as per report on the summons issued for 30.7.2008 was also accordingly rejected on account of the fact that on the date Sh. K.S.Malik, Advocate had appeared.

Another fact which has to be noticed is that the appeal was against the dismissal of the suit on 7.3.2008 by the Addl. Civil Judge (Senior Division), Safidon (Jind). It is pertinent to mention that Sh. K.S.Malik, Advocate was also the Advocate for the applicant-defendant no.2 when the said suit was decided. It is thus apparent that the petitioner was duly continued to be represented in appeal by the said counsel and the argument thus raised that there was no Vakalatnama before the Appellate Court is to be outrightly rejected.

Resultantly, the impugned order dated 17.12.2015 is upheld as it does not suffer from any infirmity or illegality and the present revision petition is dismissed in limine.

January 13, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No

Note: Vide order dated 27.1.2017, in the case title at first page of order dated 13.1.2017, nomenclature of case is ordered to be read as 'FAO' instead of 'Civil Revision' and Civil Misc. is ordered to be read as of '2016'.

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IOIN FAO No.1631 of 2016

Udey Singh (since deceased) through his legal heirs

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Office has put up this file as in the case title at first page of order dated 13.1.2017, due to typographical error nomenclature of case is printed as 'Civil Revision' instead of 'FAO' and Civil Misc. has been shown as '2016b'.

In view of above, in the case title at first page of order dated 13.1.2017, nomenclature of case be read as 'FAO' instead of 'Civil Revision' and Civil Misc. be read as of '2016'.

27.01.2017

Pka

(G.S.Sandhawalia)
Judge