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

**CR No.2397 of 2019 (O&M)
Date of Decision: 23.05.2019**

Umed Singh

Petitioner

Versus

Hari Chand @ Ishwar and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Arora, Advocate
for the petitioner.

Mr. Shokeen Singh Verma, Advocate
for the respondents.

AVNEESH JHINGAN, J (Oral):

Aggrieved of order dated 28.11.2018, vide which the application filed by the petitioner for restoration of appeal was dismissed in default, the present Civil Revision Petition has been filed.

The facts in brief are that a suit for declaration was filed by the petitioner/plaintiff [hereinafter referred to as 'petitioner'] to the effect that he was co-sharer and owner in possession of the land detailed in the suit. The suit was dismissed on 17.10.2015. Aggrieved of dismissal of the suit, an appeal was preferred. The appeal was dismissed in default on 21.09.2017. Thereafter, application was filed for restoration of the appeal. None appeared on 28.11.2018 and application for restoration of appeal was

dismissed in default. Hence, the present petition.

Learned counsel for the petitioner argues that the counsel engaged by the petitioner neither informed the petitioner that he would not be able to attend the Court on the said date nor appointed anybody else to appear on his behalf, the application was dismissed in default.

Learned counsel for the respondents argues that entire endeavour of the petitioner is to intentionally delay the matter. This is a ploy being used by the petitioner to delay the proceedings, as earlier appeal was dismissed and later on, application for restoration was dismissed in default due to non-appearance.

The Supreme Court in **Rafiz and another Vs. Munshilal and another, AIR 1981 (SC) 1400**, held as under:

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“It is not proper that an innocent litigant, after doing everything in his power to effectively participate in his proceedings by entrusting his case to the Advocate, should be made to suffer for the inaction, deliberate omission or misdemeanour of his agent the innocent litigant could not be allowed to suffer injustice for the fault of his Advocate.”

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The Supreme Court in its recent decision in **The Commissioner, Mysore Urban Development Authority Vs. S.S. Sarvesh (2019) 1 RCR (Civil) 982**, held as under:

“22. In our view, the Courts below should have seen that the first appeal is a valuable right of the appellant

and, therefore, the appellant Authority was entitled for an opportunity to prosecute their appeal on merits. If the appellant's advocate did not appear may be for myriad reasons, the Court could have imposed some cost on them for restoration of their appeal to compensate the respondent(plaintiff) instead of depriving them of their valuable right to prosecute the appeal on merits. This is what Justice Vivian Bose has reminded to the Courts while dealing with the cases of this nature in Sangram Singh (supra) to do substantial justice to both the parties to the lis. Indeed, dismissal of the appeal in default and dismissal of the appeal on merits makes a difference. The former dismissal is behind the back of the litigant and latter dismissal is after hearing the litigant. The latter is always preferred than the former.”

In view of decisions of the Supreme Court and keeping in view the reasons stated in the petition that non-appearance was because of fault of the counsel, the impugned order is set aside subject to payment of cost of ₹10,000/-, to be paid in favour of Poor Patient Welfare Fund of Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh.

The Civil Revision Petition is allowed.

[AVNEESH JHINGAN]
JUDGE

May 23, 2019
pankaj baweja

1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	No