

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 12.02.2020****CR No.1026 of 2020**

Munish Kumar

...Petitioner

Vs.

Rekha & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gaurav Chopra, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. If a case is dismissed in default of appearance or for non prosecution by reason of absence of counsel when the case is called for hearing at its number in the running cause list, it normally takes this Court not more than half a minute to restore the case for a decision on merits by a short order, if an acceptable reason for absence is provided. On this short point, the trial Court has laboured over the matter writing an order running into 9 pages and producing it after five years of the dismissal of the suit in default of appearance leading to such a waste of time, effort and energy. The energy spent by the Civil Judges (Junior Division) could have been spent more productively in other cases which are crying for judgment.

2. The irony of fate is that the application for restoration was filed within 5 days of non-suiting the plaintiff-absent party and yet the trial Court put the application to a mini trial spread over half a decade. This is a wholly unfair approach of the many judicial hands the file I imagine must

have passed through, whereas, the application could easily have been decided in a summary manner at the threshold.

3. The greater irony is that the plaintiff was not personally at fault as his counsel failed to appear, then why should the plaintiff be punished for absence of his counsel in whom he must have reposed implicit trust and faith to have diligently looked after his cause. Instead, the successive trial courts aided in dragging the case for five years only to be restored today to serve the ends of justice, irrespective of its merits.

4. No judicial court should be seen to produce such an order of dismissal of the application for restoration of the case and to obstruct the cause of justice for years together with the progress of the suit at a standstill. I have thus to allow this petition at the first hearing without notice to the defendants, as it is not legally required to help those who have all along succeeded by default committed by an Advocate of the opposite party for whatever reason he did not appear when the case was called. A last short adjournment even with notional costs would have served justice in a wholesome manner. Heavens would not have fallen.

5. As a result of the foregoing discussion, the impugned order dated 08.01.2020 is set aside. The suit is restored to its original number and position as though the order was never passed. Every effort shall be made by the learned civil judge to decide the suit at the earliest to make up for the lost time.

6. Normally, I would desist from passing orders confining the trial court to be bound by a specified timeline, but in the facts and circumstances of this case, I deem it appropriate to do so, say within a year or so, because the plaintiff was not responsible for causing the delay. A

case is best decided on merits in order to restore peace and harmony among the disputants by simply declaring their rights pressed and resisted in the civil suit.

7. Case is remanded. The suit is revived. The trial will proceed in accordance with law.

8. To cut short any further delay, parties are directed to appear before the trial court on 2.3.2020.

9. Copy of this order, ex parte respondents, shall be sent to them by the office for compliance at the expense of the petitioner.

12.02.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>