

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

CR-273-2022

Date of Decision: 28.01.2022

GUDDI DEVI

...Petitioner

Versus

RAMPAT CHAUDHARY AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sudhir Rana, Advocate
for the petitioner.

(Presence marked through Video Conference)**ARUN MONGA, J. (ORAL)**

Petitioner seeks setting aside of an order dated 08.09.2021 (Annexure P-5) passed by learned Civil Judge (Senior Division), Rewari, vide which she has been proceeded *ex-parte* in Civil Suit titled as ***Rampat Chaudhary and another vs Smt. Guddi Devi.***

2. Learned counsel submits that petitioner was though originally proceeded *ex parte* vide order dated 22.02.2017, but vide subsequent order dated 03.05.2018, learned trial Court had set aside the *ex parte* order subject to payment of costs of Rs.3,000/-, which was to be paid on or before 21.05.2018. He submits that the petitioner could not deposit the costs on the date fixed as her counsel did not inform her about the said order passed by the trial Court. In view thereof, learned trial Court again declared the petitioner as *ex parte* vide order dated 31.07.2018. When the petitioner came to know about the same, she immediately filed an application on 05.11.2019 for setting aside of second *ex parte* order dated 31.07.2018. However, vide

impugned order dated 08.09.2021, learned trial Court dismissed the application. Hence, the revision petition.

3. Learned counsel for the petitioner submits that the petitioner cannot be made to suffer for fault of her counsel. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties.

4. I have heard learned counsel for the petitioners and gone through the case file.

5. In ***Rafiq and Another Vs. Munshilal and Anr. AIR 1981 SC 140*** while dealing with a similar issue it was held that a litigant cannot suffer for the fault of his counsel, Supreme Court observed as under :-

“ What is the fault of the party who having done everything in his power expected of him, would suffer because of the default of his advance...the problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanor of his agent. We cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.”

6. In the overall premise, I deem it appropriate to grant one more effective opportunity to the petitioner subject to payment of costs of Rs.7,500/-.

7. By way of imposition of costs, in addition to that imposed by the trial Court, the petitioner shall plant trees worth Rs.7,500/- of deciduous and perennial in nature, of any variety viz. Neem, Amla, Gulmohar and/or Alstonia, in the neighbourhood of her area, where she resides. Plantation shall be carried out under the supervision of the Block Development and Panchayat Officer. Proof of plantation to be furnished by the petitioner along with bill in the Registry of this Court, with supporting letter from the BDPO of the area, to be placed before this Court upon receipt thereof. In case, the

petitioner defaults in doing so, liberty is granted to the Registry to place the matter before this Court to report non-compliance thereof.

8. To that extent, the impugned order is modified and the revision petition is allowed, while dispensing with notice to the respondents.

(ARUN MONGA)
JUDGE

28.01.2022
gurpreet

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No