

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

CR-422-2022 (O&M)
CM-1168-CII-2022
Date of Decision: 09.02.2022

TILAK RAJ

...Petitioner

Versus

JOG RAJ

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.S. Mamli, Advocate
for the petitioner.

(Presence marked through Video Conference)

ARUN MONGA, J. (ORAL)

CM-1168-CII-2022

Allowed as prayed for, subject to all just exceptions.

CR-422-2022 (O&M)

Petitioner assails an order dated 23.11.2021 (Annexure P-5) passed by learned Civil Judge (Junior Division), Shahabad, vide which, his defence has been struck off on account of his failure to file the written statement and reply to stay application.

2. Learned counsel submits that petitioner was though originally proceeded *ex parte* vide order dated 14.01.2020, but vide subsequent order dated 28.10.2021, learned trial Court had set aside the *ex parte* order subject to payment of costs of Rs.1,000/-, which was to be paid to the respondent. Last opportunity was granted to him to file his written statement and reply to stay application. However, his counsel noted an incorrect next date. He submits that the petitioner could not thus file the written statement well in

time before the learned trial Court. But the learned trial Court struck off the defence of the petitioner without granting further opportunity for the needful. Hence, the revision petition.

3. Learned counsel for the petitioner submits that the petitioner cannot be made to suffer for fault of his 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 petitioner 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 to file the written statement and reply to stay application, subject to payment of costs of Rs.10,000/-.

7. By way of imposition of costs, in addition to that imposed by the trial Court, the petitioner shall plant trees worth Rs.10,000/- of deciduous and perennial in nature, of any variety viz. Neem, Amla, Gulmohar and/or Alstonia, in the neighbourhood of his area, where he resides. Plantation shall be carried out under the supervision of the District Agriculture Officer. Proof of plantation to be furnished by the petitioner along with bill in the Registry of this Court, with supporting letter from the Agriculture

Department, 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

09.02.2022
gurpreet

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