

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

CR-2622-2021

Date of decision: 20.01.2022

DALLI AND ANR

...Petitioners

V/S

SUKA AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sarfraj Anjum Mor, Advocate
for the petitioners.

(Presence marked through Video Conference)

-:-

ARUN MONGA, J. (ORAL)

Petitioners seek setting aside of an order dated 07.10.2021 (Annexure P-5) passed by learned Civil Judge (Jr. Division), Ferozepur Jhirka, District Nuh (Mewat), vide which they have been proceeded *ex parte* in Civil Suit No.957 of 2017 titled as **Suka Vs. Mohammadin and others**

Learned counsel submits that petitioners were though originally proceeded *ex parte* vide order dated 17.08.2019, but vide subsequent order dated 02.02.2021 learned trial Court had set aside the *ex parte* order subject to payment of costs of Rs.2,500/-. He submits that due to intervening COVID-19 pandemic, the petitioners could neither deposit the costs nor appear before the learned trial Court. In view thereof, learned trial Court again declared the petitioners as *ex parte* vide order dated 01.04.2021. Petitioners came to know about the same on 29.09.2021 and immediately filed an application for setting aside of second *ex parte* order dated 01.04.2021. However, vide impugned order dated 07.10.2021, learned Trial Court dismissed the application. Hence, the revision petition.

Learned counsel for the petitioners submits that the petitioners

cannot be made to suffer for fault of their counsel. He submits that now

petitioners have deposited the costs of Rs.2,500/- as is borne out from Annexure P-6. Rules of procedure are handmaids of justice and cannot be allowed to thwart real and substantial justice between the parties.

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

In ***Rafiq and Another Vs. Munshilal and Anr. AIR 1981 SC 140*** while dealing with a similar issue 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 advocate...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.”

In the overall premise, I deem it appropriate to grant one more opportunity to the petitioner-defendants subject to payment of costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Nuh (Mewat). Deposit of cost shall be a condition precedent. If the costs are not paid as directed, the impugned order passed by the Court below shall not be recalled. To that extent, the impugned order is modified and the revision petition is allowed, while dispensing with notice to the respondents.

(ARUN MONGA)
JUDGE

January 20, 2022

vandana

Whether speaking /reasoned:

Yes/No

Whether reportable:

Yes/No