

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

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CM Nos.7244, 7246-CWP of 2022 in/and
Civil Writ Petition No.26601 of 2019

Date of Decision: May 18th, 2022

Arvinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Nakul Sharma, Advocate
for the applicant-petitioner.

Mr. S.P.S. Tinna, Additional Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-7244-CWP-2022

Mr. N.P.S. Mann, Advocate, has appeared and filed power of attorney on behalf of respondent No.4.

Prayer in this application is for exemption from filing certified copy of letter dated 29.04.2022 i.e. Annexure P-7 and for placing on record the typed copy of the same.

Application is allowed subject to just exceptions.

Typed copy of letter dated 29.04.2022 is taken on record as Annexure P-7.

Exemption, as prayed for, is granted.

CWP No.26601 of 2019 (O&M)

With the consent of the counsel for the parties, the writ petition is preponed from 27.09.2022 for disposal of the same.

When the case was taken up for hearing on 19.09.2019,

following order was passed:-

“Learned counsel for the petitioner has submitted that the Commissioner has dismissed the appeal on merits in the absence of the counsel for the appellant.

*It is submitted that in case of non-appearance of the counsel for the appellant, the appellate Court can dismiss the case in default in terms of Order 41 Rule 17 of the CPC but cannot decide the same on merits. In this regard, he has relied upon the decision of the Supreme Court rendered in **Civil Appeal No. 5950 of 2012** titled as **“Ghanshyam Dass Gupta Vs. Makhan Lal”** decided on 21.08.2012.*

Notice of motion for 13.11.2019.”

Counsel for the parties could not dispute the legal position as has been asserted by the counsel for the petitioner, especially with reference to the judgment of the Hon'ble Supreme Court in Ghanshyam Dass Gupta's case (supra).

In the light of the admitted fact that the counsel for the petitioner had not appeared before the Appellate Authority on the day when the matter was taken up for consideration and decided on merits, we allow the present petition by setting aside the impugned order dated 31.07.2019 (Annexure P-5) and remand the case to the Appellate Authority i.e. the Joint Development Commissioner (IRD), Punjab, exercising the powers of the Commissioner for fresh decision by hearing the counsel for the parties.

Parties are directed to appear before the Joint Development Commissioner (IRD), Punjab, on **15.07.2022 at 10:00 AM.**

Status quo with regard to possession shall be maintained till the decision by the Appellate Authority.

In the light of the decision of the writ petition, pending application also stands disposed of.

(AUGUSTINE GEORGE MASIH)
JUDGE

May 18th, 2022
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No