



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

227

**RSA-3347-1999 (O&M)
Date of Decision : 09.05.2024**

GIAN CHAND Appellant

VERSUS

TARA CHAND AND ANR Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

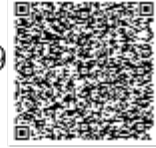
Present : Mr. Ravi Girdhwal, Advocate for
Mr. Sanjay Mittal, Advocate for the appellant.

None for respondent No.1.

Service of respondent No.2 dispensed with
vide order dated 29.05.2000.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellant aggrieved by the judgment and the decree dated 18.10.1994 passed by the Trial Court and the judgment and the decree dated 28.05.1999 passed by the First Appellate Court.
2. As per the Office report, respondent No.1 has since expired. No one has come forward to get themselves impleaded as legal representatives of deceased respondent No.1. At one stage, Mr. Ajay Jain, Advocate had put in appearance on behalf of the respondents.
3. Learned counsel for the plaintiff-appellant has referred to Order XXII Rule 2-A and B of the Code of Civil Procedure, 1908 to contend that it



was incumbent on the legal representatives of deceased respondent No.1 to have come on to the record once the said respondent has died.

4. Since no one has come forward on behalf of respondent No.1 to get themselves impleaded as his legal representatives, the present appeal is being decided *ex parte*.

5. The short submission made by the learned counsel for the plaintiff-appellant is that the counsel for the plaintiff had filed an application for withdrawal which was dismissed by the Court and thereafter the counsel had pleaded no instructions. Once the counsel had pleaded no instructions notice should have been served upon the appellants before deciding the case on merits in the absence of the counsel.

6. Heard.

7. Once the counsel had pleaded no instructions the Court ought to have issued notice to the appellant before deciding the case on merits.

This Court in the case of **Baljit Singh v. Maya Ram [2006(4) RCR Civil 415]** has held as under :

“6. As regards the observations of the learned Court below that there was no evidence to prove the illness for want of production of record, the learned counsel placed reliance on the judgment of this Court in Kanshi Ram v. Haryana State and others, 2004(4) RCR (Civil) 102 : 2004(2) Civil Court Cases 362 (P&H) wherein it



was held that non-examination of doctor or Vaid in support of assertion of illness alone was not a ground to reject the explanation. It may also be noticed here that this Court also came to the conclusion that the party cannot be made to suffer for the fault of the counsel and the suit was ordered to be restored. In the present case, the order dated 6.10.1997 shows that the appellant was not present in Court when the counsel pleaded no instructions and therefore, it was incumbent upon the Court to have issued notice to the parties. Since this was not done, the order suffers from an illegality which needs to be set right. It may be mentioned here that the judgments of this Court relied upon by the counsel for the respondents are dealing with the cases in the trial Court where the party is normally required to be present and the judgments are on the facts of a particular case and cannot be applied universally as is sought to be contended by the learned counsel for the respondent.”

8. In view of the above the Trial Court ought to have called upon the appellant before deciding the case on merits.

9. As per the law laid down by a Constitution Bench of the



Hon’ble Supreme Court in the case of **Pankajakshi (dead) through LR’s & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]** there is no requirement for framing of substantial questions of law in the present appeal.

10. In view of the above, the present appeal is allowed; judgments and decrees passed by the Trial Court and that of the First Appellate Court are set aside and the matter is remanded back to the successor Court of Sh. R.S. Virk, HCS, Senior Sub-Judge, Rewari for deciding the same afresh and in accordance with law. Registry to send copy of this order along with record of the case to the Court concerned for **24.05.2024**. Pending applications, if any, also stand disposed off.

09.05.2024

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No