

DESA SINGH  
v.  
AJIT SINGH AND ORS.

DECEMBER 8, 2006

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

*Practice and procedure—Non-appearance on behalf of appellant in second appeal for reasons beyond their control—Decision on merits by High Court against appellant—Correctness of—Held: High Court ought to have dismissed the matter for default—Thus, order of High Court set aside and matter remitted back.*

The question which arose for consideration in this appeal was whether in second appeal when there was non appearance on behalf of appellant due to unforeseen circumstances, High Court was right in proceeding to decide the matter on merits.

Disposing of the appeal, the Court

**HELD:** When the matter was taken up before the High Court, there was no representation by the appellant because of circumstances beyond their control and the matter was decided against them. Normally when the appellant is not represented, the High Court would dismiss it for default and not go into the merits in detail. Thus, the order of the High Court is set aside and the matter is remitted back to the High Court for fresh hearing on merits.

[476-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5663 of 2006.

From the final Judgments and Orders dated 22.10.2002 and 7.5.2004 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 8/1981 and C.M. No. 13908-C/2003 in R.S.A. No. 8/1981 respectively.

Amrit Lal Jain, Dhiraj and P.N. Puri for the Appellant.

Ajay Jain, Jinendra Jain, G. Ravi Shanker and Kamendra Mishra for the Respondents.

The Judgment of the Court was delivered by

**A Dr. ARIJIT PASAYAT, J.** Leave granted.

Challenge in these appeals is to the correctness of judgment rendered by a learned Single Judge of the Punjab and Haryana High Court dismissing the second appeal filed. Though appeal was decided in the absence of learned counsel for the appellant yet the High Court proceeded to decide the matter on merits.

**B** Learned counsel for the appellant submitted that an application in terms of Order XLI of the Rule 27 of the Code of Civil Procedure, 1908 (in short the ‘CPC’) was filed. Shri Ishwari Parshad, Advocate was initially engaged by the appellant at the time of admission. He retired from practice due to his old age. Thereafter another learned counsel Sh. Susheel Kumar Goyal alongwith his son Sh. S.B. Goyal were engaged. Unfortunately, Sh. S.B. Goyal expired in 2001 and thereafter Sh. Sushil Kumar Goyal also retired from practice. When the matter was listed on 22.10.2002 there was no appearance on behalf of the appellant because of the aforesaid unforeseen circumstances. That is how there was no representation when the matter was listed. Unfortunately, **C** the High Court without referring to all the relevant aspects placed for consideration, decided the matter on merits.

**D** Learned counsel for the respondents submitted that though the appellant was not represented, the High Court looked into the records and decided the matter.

**E** As the factual scenario which is almost undisputed goes to show, there was no representation when the matter was taken up before the High Court. Because of circumstances beyond the control of the appellants, there was no appearance and the matter was decided against them. Normally when the appellant is not represented, the High Court would dismiss it for default and **F** not go into the merits in detail. That is precisely what has not been done in the present case.

In the peculiar circumstances, we set aside the order of the High Court and remit the matter to the High Court for fresh hearing on merits.

**G** Learned counsel for the appellant stated that another counsel shall be engaged within a period of one month. The matter shall be listed before the appropriate Bench after a period of six weeks.

Appeals are disposed of to the aforesaid extent with no order as to costs.

**H** N.J.

Appeals disposed of.