

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

CWP No.4824 of 2016

Date of Decision:10.11.2016

Bhupender Kumar

.....Petitioner

Vs.

Financial Commissioner, Haryana and othersRespondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Arun Bansal, Advocate for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana for
respondents No.1 to 3.

Mr. Kulbhushan Sharma, Advocate for respondents
No.20 to 31, 33, 35 to 38 and 45.

RAKESH KUMAR JAIN, J.(Oral)

This petition is filed to challenge the order dated 2.12.2015 and order dated 20.1.2016 passed by the Financial Commissioner, Haryana. The order dated 2.12.2015 was passed dismissing the revision petition filed by the petitioner for non-appearance much less for non-prosecution and order dated 20.1.2016 was passed dismissing the application of the petitioner for recalling order dated 2.12.2015 as the petitioner did not appear at the relevant time when the case was called on 15.7.2015.

Counsel for the petitioner submits that he had reached the Court of the Financial Commissioner but by that time, order of dismissal for non-prosecution had already been passed but he filed the application at 4:30 P.M on the same day. The said application has been dismissed by the impugned order dated 20.1.2016.

Counsel for the petitioner has submitted that the Court should have decided the matter on merits as there was no intentional non appearance on the part of the petitioner's counsel who had otherwise

reached the Court on the date. In support of his submission, he has relied upon a decision of the Hon'ble Supreme Court rendered in the case of Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others, AIR 1987 SC 1353.

On the other hand, counsel for the respondents has submitted that the petitioner himself is to be blamed for not appearing in Court in time and in case this Court feels that the case should be decided on merits, the respondents should be compensated with costs as they had to unnecessarily contest this petition because of the negligence of the petitioner.

After hearing learned counsel for the parties, I am of the considered opinion that the impugned order deserves to be set aside as the petitioner's counsel reached the Court of the Financial Commissioner on 2.12.2015, when the order of non-prosecution was passed, but he could not appear when the case was called for hearing, however, he immediately moved the application on the same day for restoration of the case and due to inadvertence could not appear when the application was listed for hearing.

Thus, in view of the aforesaid facts and circumstances, the present petition is hereby allowed, subject to payment of ₹25,000/- as costs to be paid by the petitioner to the respondent - Sunder Lal alias Surinder Kumar, as suggested by his counsel.

Parties are directed to appear before the Financial Commissioner on 7.12.2016.

November 10, 2016
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No