

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

LPA-1638-2015 (O&M)
Decided on : 18.02.2016

Brij Bhushan and others

.... Appellants

VERSUS

State of Haryana and others

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
 HON'BLE MS. JUSTICE LISA GILL

Present: **Mr.K.L.Arora, Advocate, for the appellants.**

Ms.Shubhra Singh, Addl.A.G., Haryana.

RAJIVE BHALLA, J. (ORAL)
CM-3501-2015

Prayer in this application is to condone delay of 2004 days in filing the appeal.

In view of averments in the application and arguments addressed as well as reasons recorded in the main order, the application is allowed and delay in filing the appeal is condoned.

LPA-1638-2015

The appellants, who have an interest in common with the proforma respondents, pray that order dated 25.03.2010, dismissing CWP-8237-1993 for non-prosecution and order dated 24.07.2015, dismissing CMs-2080-81-2015, for recalling of this order, may be set aside.

Counsel for the appellants submits that the appellants filed an application for early hearing. Notice was issued but as counsel for respondents No.2 and 3 did not put in appearance on

16.12.2009, the application was adjourned. The application came up for hearing on 25.03.2010 but though the application alone was fixed for consideration, the writ petition was dismissed for want of presence of counsel for the petitioners (appellants herein). The appellants were not aware of the dismissal of the writ petition as the website of the High Court, continued to show that the writ petition is pending. However, when the appellants eventually came to know about the dismissal of the writ petition, they filed CMs-2080-81-2015, which have been dismissed on 24.07.2015, on the ground of gross negligence and delay. Counsel for the appellants prays that as the writ petition was not fixed for hearing and as the appellants had no knowledge of the dismissal of the writ petition, the impugned orders may be set aside and the writ petition may be heard and decided on merits.

Counsel for the State of Haryana submits that whatever be the justification, the fact that the appellants did not file an application for restoration, for five years, reveals their casual attitude. The application for recalling of the order, has been rightly dismissed.

We have heard counsel for the parties, perused the impugned orders and considered interim orders reproduced in the grounds of appeal. The appellants filed CWP-8237-1993 which was admitted. The appellants filed CM-17211-2009, praying for early hearing of the writ petition on the ground that the questions involved

have been answered in their favour in RSA-800-1992 and CWP-1632-1999. Notice was issued in the application but on 16.12.2009 as no-one has put in appearance on behalf of respondents No.2 and 3, fresh notices were ordered to be served on Shri Akash Jain, Advocate as well as on respondents No.2 and 3 for 25.03.2010. The application was eventually taken up for hearing on 25.03.2010 when the following order was passed: -

“The petitioners have sought for grant of higher scales in the writ petition. There is no representation for the petitioners. Notices have been issued to the respondent and the Registry has reported that they have been placed in the bag of the Advocate, although personal service has not been effected. The case is of the year 1991 and the same is dismissed for non-prosecution.”

Admittedly, the appellants filed CMs-2080-81-2015 for recalling of this order, after five years, pleading that they were not aware of the dismissal of the writ petition. Notice was issued subject to the appellants' depositing Rs.10,000/- as costs but vide order dated 24.07.2015 the application was dismissed primarily on the ground that the appellants have been careless in pursuing their interest, thereby disclosing gross negligence.

As already recorded, a perusal of the paper book and the impugned orders reveals, that what was placed before the learned Single Judge for adjudication on 25.03.2010, was an application for early hearing. The writ petition, we would like to emphasise, was not set down for hearing. Thus, if at all, it was the application for early hearing and not the writ petition that could have been

dismissed. This apart, it would be appropriate to point out that on 16.12.2009, the application was adjourned for serving notices on Shri Akash Jain, Advocate and on respondents No.2 and 3. The application was, therefore, fixed for appearance of the respondents on 25.03.2010. The absence of the appellants on 25.03.2010, in view of the facts narrated above, should not have invited the extreme step of dismissal of their writ petition for non-prosecution.

The question that, however, remains is whether any plausible explanation is forthcoming for the delay of 05 years in filing the application for restoration. The explanation proffered is that as the website of the High Court shows the writ petition as pending, the appellants were under the impression that the writ petition is still pending. The explanation in our considered opinion, is factually correct and bonafide. The appellants, therefore, cannot be said to be negligent in pursuing the writ petition.

Consequently, the appeal is allowed, order dated 25.03.2010, dismissing CWP-8237-1993 for non-prosecution and order dated 24.07.2015, dismissing CMs-2080-81-2015, are set aside and the writ petition is restored to its original number and stage.

[RAJIVE BHALLA]
JUDGE

18.02.2016
shamsher

[LISA GILL]
JUDGE