

103

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

CWP No. 10625 of 2022

DATE OF DECISION : 18.05.2022

Dariyao Singh @ D. S. Malik

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Binat Sharma, Advocate,
for the petitioner.

Mr. Pankaj Middha, Addl. AG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, seeks quashing of order dated 24.01.2019 (Annexure P-3) whereby petition filed by him under Section 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 for eviction of respondents No.4 and 5 from the property in question, was dismissed by respondent No.3 and order dated 10.08.2021 (Annexure P-5), whereby appeal of the petitioner was dismissed in default for non-appearance of the petitioner and order dated 30.11.2021 (Annexure P-7), whereby the application of the petitioner for restoration of his appeal, was also dismissed by respondent No.2.

2. Petitioner filed an application (Annexure P-6) seeking restoration of his appeal, *inter alia*, stating as below:

“3. That on dated 20.02.2020 the case was adjourned for 17.03.2020 and further adjourned for 05.05.2020. Thereafter due to spread of pandemic disease i.e Covid-19 the working of the Hon'ble Tribunal were closed. Vide order dated 04.08.2020 it was mentioned in the order that file produced before the Presiding Officer and due to spread of pandemic, working of the Court has been postponed by the order of

Presiding Officer of the Hon'ble Tribunal and the case was adjourned for 19.01.2021. Thereafter the case was again adjourned for 09.03.2021.

4. That on 09.03.2021 the case was fixed for evidence and argument case called counsel for appellant present and requested for adjournment and on the request of the counsel argument was not advanced and case was adjourned for 20.04.2021. On 20.04.2021 the presiding officer was on leave and the case was adjourned for 06.07.2021.

5. That on 06.07.2021 the Hon'ble Tribunal passed the order that file present but counsel for the appellant absent. Now the file adjourned for 10.08.2021.

6. That on 10.08.2021 due to non-appearance of the appellant as well as his counsel, the appeal was dismissed in default.”

3. Perusal of the contents of the application reveals that default in appearance was *bona fide* caused by the pandemic during which time not only the Courts but government offices were working under certain restrictions. Even the general public was also keeping a check on public movements and only bare minimum outside exposure was maintained in order to avoid the spread of pandemic. In the circumstances, it is understandable that the petitioner, who is senior citizen and is more susceptible to contract pandemic infection than others, would have also maintained the medical protocol, what was being advised to the general public. In the premise, the appellate authority should have taken a lenient view and restored the appeal and heard the same on merits.

4. Given the nature of order being passed, there is no necessity to seek return by any of the respondents as no further proceedings and/or pleadings are required.

5. Taking a wholesome view in totality of circumstances, as narrated in the application seeking restoration, the impugned orders dated 10.08.2021 and 30.11.2021 (Annexures P-5 and P-7 respectively) are set-aside and the appellate authority is directed to restore the appeal filed by

the petitioner to its original number and status and dispose of the same on merits in accordance with law.

6. Disposed of in above terms.

MAY 18, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No