

LPA No.674 of 2017 (O&M)

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

LPA No.674 of 2017 (O&M)

Date of Decision: 15.02.2022

Amar Singh deceased through LRs & others

...Appellants

Versus

The Financial Commissioner & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Jagdish Manchanda, Advocate
for the applicant – appellants.

Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

Mr. Nitin Jain, Advocate
for respondents No.3 (1) and 3 (iii).

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-1413-LPA-2017

Prayer in this application is for condonation of delay of 143 days in re-filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit of the counsel himself, delay of 143 days in re-filing the appeal stands condoned.

The application stands allowed.

CM-1414-LPA-2017

Prayer in this application is for impleading the legal representatives of Smt. Jumia Devi widow of Amar Singh, Balwant Singh

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son of Amar Singh, Hari Singh son of Gurditta, Rajinder son of Hari Singh, Ajit son of Rajinder, Prem Lal son of Phoola son of Gurditta and Kesar wife of Phoola son of Gurditta, who are stated to have expired on 18.06.2008, 21.03.2000, 01.03.2000, 28.04.2014, 10.09.2005, 29.09.2009 and 13.07.2002 respectively, leaving behind their legal representatives as detailed in paras 2 to 4 of the application. The application is supported by an affidavit of Vinod Kumar son of late Sh.Prem Lal son of late Sh. Phoola, resident of Neoli Kalan, Tehsil and District Hisar.

For the reasons stated in the application, the same is allowed subject to all just exceptions. Legal representatives as detailed in paras 2 to 4 of the application are brought on record subject to all just exceptions. Amended memo of parties appended along with the main appeal is taken on record.

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On the last date of hearing i.e. 02.02.2022, following order was passed:-

“Learned counsel for respondents No.3 (i) and 3 (iii) has referred to the order dated 09.08.2018 passed by the Division Bench of this Court while issuing notice of motion by contending that the appellant had not disclosed the true facts before this Court. What has been disclosed is that the Special Leave Petition preferred against the order passed by the learned Single Judge in Regular Second Appeal, has been dismissed by the Hon'ble Supreme Court. The factum that the Special Leave Petition had been preferred by the appellant against the order passed in the writ petition, which has

been preferred by the appellant, has not been disclosed.

Learned counsel for respondents No.3 (i) and 3 (iii) has referred to the order passed by the Hon'ble Supreme Court in SLP No.25284 of 2017, titled as 'Lal Chand & others Vs. Financial Commissioner, Haryana & others', dated 08.03.2018, wherein, on instructions, counsel for the special leave petitioner, had withdrawn the Special Leave Petition, which permission was granted by the Hon'ble Supreme Court but without any liberty either being asked for or granted by the Hon'ble Supreme Court. The said order dated 08.03.2018 reads as follows:-

“Learned counsel appearing for the petitioners, on instructions, prays for withdrawal of the special leave petition. Permission granted. Consequently, the special leave petition stands dismissed as withdrawn.”

He states that once the Special Leave Petition has been dismissed and that too, on instructions, the present appeal would not be maintainable especially when there is no permission either sought or granted for approaching the Division Bench of this Court.

Reference has also been made to the order dated 27.04.2018 passed by the Hon'ble Supreme Court in Special Leave Petition No.25282 of 2017, titled as 'Amar Singh (D) through LRs & others Vs. Shri Krishnan Deve (D) through LRs & others', challenging the order passed in RSA No.523 of 1986, where the Hon'ble Supreme Court had passed the following order:-

“Delay in filing the substitution application is condoned. Application for substitution allowed. Abatement is set aside. Delay in filing and refiling

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SLP is condoned. We find no reason to entertain this special leave petition, which is, accordingly, dismissed. Pending application(s), if any, shall stand disposed of."

In view of the above, learned counsel for respondents No.3 (i) and 3 (iii) states that the present appeal deserves to be dismissed.

Learned counsel for the appellants prays for an adjournment to verify the said aspect and seek instructions.

Prayer granted.

Adjourned to 15.02.2022."

Learned counsel for the appellants has come up with an assertion that at the time when the Letters Patent Appeal had been filed, the Special Leave Petition has not been filed by the appellant and therefore, the present appeal would be maintainable.

This contention of the learned counsel for the appellant cannot be accepted in the light of the fact that despite there being a Letters Patent Appeal preferred by the appellants, they had chosen to file a Special Leave Petition before the Hon'ble Supreme Court, which unfortunately had been withdrawn by the counsel, who had appeared before the Hon'ble Supreme Court, but without even informing the Court about the pendency of the Letters Patent Appeal or seeking any permission to pursue the present appeal.

In the light of the above factual position when the Special Leave Petition preferred by the appellants against the order passed by the learned Single Judge in CWP No.12075 of 1996 has been dismissed, we

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find no ground for entertaining the present appeal and therefore, dismiss the same.

All the pending miscellaneous applications stand disposed of.

(AUGUSTINE GEORGE MASIH)

JUDGE

15.02.2022

Harish

(SANDEEP MOUDGIL)

JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No