

CR-606-2008 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-606-2008 (O&M)

Date of Decision : 22.03.2023

Union of India & Anr.

....Petitioners

VERSUS

Partap Singh & Anr.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Shivoy Dhir, Sr. Panel Counsel, UOI for the petitioners.

Mr. Simranjit Singh, Advocate for respondent No.1.

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ALKA SARIN, J. (Oral)

CM-13855-C-2016

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 99 days in re-filing the application i.e CM-13857-CII-2016.

For the reasons stated in the application, the same is allowed and the delay of 99 days in re-filing the application i.e. CM-13857-CII-2016 is condoned.

CM-13856-C-2016

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 2325 days in filing the application i.e CM-13857-CII-2016.

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The present application is supported by the affidavit of the lawyer Mr. Jagdish Marwaha, Special Counsel for Union of India, wherein he has stated that his wife was suffering from cancer and, therefore, he did not come to know of the decision in CR-606 of 2008 dismissing the same for non-prosecution on 21.10.2009. It is further stated in the affidavit that the wife of the counsel was detected with Cancer in the first week of October 2009 and eventually passed in the year 2012.

Cogent reasons have been mentioned in the application. In view thereof, the present application is allowed and delay of 2325 days in filing the application for recalling the order dated 21.10.2009 i.e CM-13857-CII-2016 is condoned.

CM-13857-CII-2016

This is an application for recalling of the order dated 21.10.2009 passed by this Court in CR-606-2008.

For the reasons stated in the application, the same is allowed. The order dated 21.10.2009 is recalled and CR-606-2008 is restored to its original number. With the consent of both the counsel for the parties, the main case i.e. CR-606-2008 is taken on Board today itself for hearing on merits.

CR-606-2008

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 20.10.2007 whereby the application filed by the defendant-petitioners for return of the plaint on the ground of jurisdiction has been rejected.

The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for declaration to the effect that the act and conduct of the defendant-petitioners in terminating the service of plaintiff-respondent No.1 without conveying any order of termination of the plaintiff-respondent No.1 from the post of Depot Store Keeper, G-III, to Store Department DCW (DMC), Patiala and withholding the pay and allowances and other benefits attached to the post of the plaintiff-respondent No.1 was illegal, null and void, unauthorized and unwarranted.

In the said suit, an application was filed for dismissal of the case on the ground that the Civil Court did not have jurisdiction. Vide order dated 22.04.2005 the said application was dismissed holding as under :

“I have heard the counsel for both the parties. I have heard counsel for both the parties (sic) and have gone through the case file. Accordingly with their kind assistance, I am considered opinion that the objection is raised by the applicant for dismissal of the suit is mix question of fact and it can only adjudicated after leading cogent and satisfactory evidence. Therefore, this application on this stage is premature and accordingly it is dismissed. Now to come up on 09.05.2005 for filing written statement on behalf of the defendants.”

Thereafter, the defendant-petitioners filed their written statement. Another application (Annexure P-7) was moved for returning the plaint on the ground of want of jurisdiction. The said application was

dismissed vide the impugned order dated 20.10.2007 (Annexure P-1) holding that earlier vide order dated 22.04.2005 a similar application had been dismissed and that in view of the order dated 22.04.2005, the second application was not maintainable and further that the defendant-petitioners should have filed a revision petition challenging the order dated 22.04.2005.

Learned counsel for the defendant-petitioners would contend that the first application was dismissed on the ground that the same was pre-mature. It is further the argument that it was specifically held in the order dated 22.04.2005 that the application was being dismissed at this stage being pre-mature and in view thereof the second application would not be barred by law.

Per contra, learned counsel for plaintiff-respondent No.1 has argued that the application was clearly barred inasmuch as the first application was dismissed on similar grounds and the same was never challenged by filing a revision petition and hence the same attained finality and would operate as *res-judicata*.

Heard.

The earlier application in the present case was dismissed specifically observing that the application was being dismissed at that stage being pre-mature and in view thereof the second application could not have been held to be barred by the law. There was no decision on merits on the first application. The impugned order is not sustainable in law inasmuch the dismissal of the earlier application could in no manner be treated as being a bar to the filing of the second application and would definitely not operate as *res judicata*.

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In view of the above, the impugned order dated 20.10.2007 is set aside and the matter is remanded to the Trial Court to decide the application afresh in accordance with law.

The present revision petition is disposed off accordingly.
Pending applications, if any, also stand disposed off.

March 22, 2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO