

CM-17812-2023 in/and
CWP-7556-2023

2023:PHHC:142710
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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CM-17812-2023 in/and
CWP-7556-2023

Date of decision: 8th November, 2023

Govind and another

...Petitioner(s)

Versus

Dharampal and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.K. Girdhwal, Advocate for the petitioners.

Ms. Palika Monga, Deputy Advocate General, Haryana
for respondents No. 2.

VIKAS BAHL, J (Oral)

CM-17812-2023

1. This is an application under Order 9 Rule 9 read with Section 151 CPC praying for restoring the main case which was dismissed for non-prosecution vide order dated 11.09.2023 (Annexure A-1).

2. For the reasons stated in the application, which is duly supported by an affidavit, the present application is allowed and the order dated 11th September, 2023 is recalled and the main case is restored to its original number.

Main case

1. This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned order dated 13.10.2022 passed by respondent no.2-

Sub Divisional Magistrate, Jhajjar, vide which the petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 for setting aside the transfer deed dated 12.01.2021 filed by respondent no.1 has been allowed and also the order dated 07.02.2023 (Annexure P-10) vide which review application has been dismissed by the Sub Divisional Magistrate-cum-Maintenance Tribunal.

2. On 11.09.2023, while dismissing the case for non-prosecution, this court was pleased to pass the following order:-

“1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned order dated 13.10.2022 passed by respondent no.2- Sub Divisional Magistrate, Jhajjar, vide which the petition under Section 23 of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 for setting aside the transfer deed dated 12.01.2021 filed by respondent no.1 has been allowed and also the order dated 07.02.2023 (Annexure P-10) vide which review application has been dismissed by the Sub Divisional Magistrate-cum-Maintenance Tribunal.

2. Learned State counsel has submitted that as per the law laid down by the Hon’ble Division Bench of this Court in Paramjit Kumar Saroya Vs. Union of India and another, reported as 2016(3) RCR (Civil) 146, an appeal can be filed by any of the aggrieved persons against the said order.

3. None has appeared on behalf of the petitioners to rebut the said fact.

4. Accordingly, the present petition is dismissed for non prosecution.

*(VIKAS BAHL)
JUDGE”*

September 11, 2023.

3. Learned counsel for the petitioners has submitted that in view of the objection taken by the learned State counsel in the abovesaid order, the petitioners be permitted to withdraw the present writ petition with liberty to file a statutory appeal, in accordance with law but has prayed that interim order dated 17.04.2023 be continued for a period of one month from today so as to enable the petitioners to approach the appellate authority and has further submitted that in case petitioners file a statutory appeal within a period of one month from today, the appellate authority be directed not to dismiss the same solely on the ground of limitation.

4. In view of the statement made by learned counsel for the petitioners, the present petition is dismissed as withdrawn with liberty to file a statutory appeal before the appellate authority with the following directions:-

i) In case the petitioners file a statutory appeal within a period of one month from today, the order of stay granted by a coordinate Bench of this Court on 17.04.2023 would continue upto 08.12.2023.

ii) The appeal so filed by the petitioners would be decided by the appellate authority on merits and would not be dismissed solely on the ground of limitation, if filed within a period of one month from today.

iii) The further continuance of the stay order beyond 08.12.2023 would be independently considered by the appellate authority and the grant of the stay order passed by this Court or its continuance should not be taken to be an expression on

merits of the case.

iv) The appellate authority would decide the appeal independently, in accordance with law, after hearing all the relevant parties.

[VIKAS BAHL]
JUDGE

8th November, 2023
naresh k./Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |