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Date of Decision : 15.02.2024

....Appellant

VERSUS

....Respondents

**CORAM : HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Mr. Saurabh Kapoor, Addl. A.G., Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

CM-3543-LPA-2019

This is an application for condonation of delay of 130 days in re-filing the present appeal.

For the reasons mentioned in the application, the same is allowed and delay of 130 days in re-filing the present appeal is condoned.

CM-3542-LPA-2019

This is an application for condonation of delay of 35 days in filing the present appeal.

For the reasons mentioned in the application, the same is allowed and delay of 35 days in filing the present appeal is condoned.

LPA-1588-2019

1. The present Letter Patent Appeal has been preferred for setting aside the impugned judgments dated 13.11.2018 and 13.12.2018, whereby the civil writ petition is dismissed in default and the prayer to restore it, is also rejected by the learned Single Bench.

2. Learned counsel for the appellant submits that the petitioner has engaged the counsel for arguing the matter, who was unable to attend the Court on account of being unwell and suffering from fever and the case was dismissed in default. The application for restoration was moved as soon as possible and the rejection of the restoration application is likely to defeat the claim of the petitioner without being given an opportunity to examine the same on merits.

3. Learned State counsel submits that on account of the petitioner alone that this situation has arrived and there has been an apparent negligence on the part of the appellant itself. Having considered the submissions and perused the orders, the writ petition was dismissed for non-prosecution as no one had appeared on behalf of the petitioner on 06.12.2017 and 02.08.2018 and, therefore, the case was dismissed for non-prosecution on 13.11.2018. Application for recalling and restoration was moved. However, considering the case of repeated defaults, the prayer for restoration was not allowed.

4. In the opinion of this Court, while the lawyers are supposed to be present to assist the Court, and it is only when the Court finds that even

on previous dates there was no representation, that the extreme step is taken for dismissing the petition in default. However, the petitioner immediately thereafter within one month had moved an application for restoration, keeping in view the same, it cannot be said that the petitioner was not interested to pursue his case. Even otherwise, a pragmatic approach is required to be maintained in such aspects.

5. In view of the above, this appeal is allowed and orders passed by learned Single Bench dated 13.11.2018 and 13.12.2018 are quashed and set aside. The Registry is directed to restore the Civil Writ Petition to its original status and number and list the same before the concerned Roster.

6. Pending application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

February 15, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No