

CWP-7866-2023(O&M)

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2024:PHHC:007218

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-7866-2023(O&M)

Date of decision : 19.01.2024

Smt. Prabhjot Kaur Arora alias Meeta and another

... Petitioners

Versus

Additional Deputy Commissioner-cum-Maintenance Tribunal, Chandigarh
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Anand Singh Rohilla, Advocate
for the applicants-petitioners (through V.C.).

Mr. Akshay Jain, Addl.Standing Counsel and
Mr.Shobit Phutela, Asstt. Standing counsel
for respondent no.1-U.T. Chandigarh.

Mr.Sandeep Jasuja, Advocate
for respondents no.2 and 3.

VIKAS BAHL, J.(ORAL)

CM-16145-CWP-2023

1. This is an application under Section 151 CPC for recalling the order dated 14.09.2023 (Annexure A-1) vide which the writ petition was dismissed for non-prosecution.

2. Learned counsel for the applicants-petitioners has submitted that in the order dated 14.09.2023, it has been noticed that the impugned order is appealable in view of the notification dated 29.11.2017 and also in view of the order passed 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*** but since the present petition has been dismissed

for non-prosecution, thus, the applicants-petitioners cannot even file the appeal against the said order. It is further submitted that in case the writ petition is restored, then the applicants-petitioners would seek liberty of the Court to file an appeal in view of the objection raised by learned counsel appearing for respondents no.2 and 3 and has prayed that in case the appeal is filed within a period of one month, then the same not be dismissed by the appellate authority solely on the ground of delay as the applicants-petitioners are pursuing the present remedy.

3. Learned counsel for respondents no.2 and 3 has filed reply to the application, which is taken on record. It is submitted that in case only the above limited prayer is made, then he has no objection to restoration of the case.

4. Keeping in view the above said facts and circumstances, the application is allowed and the order dated 14.09.2023 is recalled and the writ petition is restored to its original number.

CWP-7866-2023

1. This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction especially in the nature of certiorari for setting aside the order dated 15.03.2023 (Annexure P-3) passed by respondent no.1-Additional Deputy Commissioner-cum-Maintenance Tribunal, Chandigarh in an application filed under Sections 21 and 22 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

2. Learned counsel for respondent nos.2 and 3 has submitted that the present order is appealable and for the said purpose, has referred to Notification dated 29.11.2017. The relevant portion of the said notification

is reproduced hereinbelow:-

“No. SWI/Sr.Citizens Act/2017/7890

Dated: 29/11/17

In partial modification of the Chandigarh Administration Notification No. SWI/Sr. Citizens Act/Tribunals/2008/9752 dated 22.12.2008, the following is hereby added at the end of said notification:

The Administrator, UT. Chandigarh is further pleased to declare the Additional District Magistrate/Additional Deputy Commissioner, Union Territory Chandigarh as the Maintenance Tribunal who shall hear the cases under Sections 21, 22 & 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the District Magistrate as an Appellate Tribunal, who shall hear the appeals against the order passed under the aforesaid sections of the Act ibid.

DATED: 28:11.2017

*SECRETARY SOCIAL WELFARE
WOMEN & CHILD DEVELOPMENT
CHANDIGARH ADMINISTRATION”*

It is further submitted that in view of 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***, it is open to any aggrieved person to file an appeal before the Appellate Tribunal which is District Magistrate in the present case.

3. Learned counsel for the petitioners has submitted that in view of the objection raised by learned counsel for respondents no.2 and 3, the petitioners seek to withdraw the present writ petition with liberty to file a statutory appeal before the appellate authority and has prayed that in case the appeal is filed within a period of one month, then the appellate authority be directed not to dismiss the same solely on the ground of delay as the petitioners were pursuing the present remedy.

4. Learned counsel for respondents no.2 and 3 has no objection to the said course of action.

5. Keeping in view the above said facts and circumstances, the present petition is dismissed as withdrawn with liberty to the petitioners to

file a statutory appeal before the appellate authority and in case the appeal is

filed within a period of one month, the appellate authority is directed not to dismiss the same solely on the ground of delay.

6. It is relevant to mention that this Court has not opined on the merits of the case and it is open to both the parties to raise all the pleas which are available to them in law.

(VIKAS BAHL)
JUDGE

January 19, 2024.
Davinder Kumar

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