



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

LPA-2130-2017 (O&M)

Date of Decision : 05-03-2026

NIKHIL KUMAR AND OTHERSAppellant(s)

VERSUS

STATE OF HARYANA & OTHERSRespondent(s)

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Sukhwinder Singh Sahu, Advocate for the appellants.
Mr. Sandeep Chhabra, Addl. A.G. Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present appeal, challenge is to the impugned order dated 06.10.2017 passed by the learned Single Judge in CWP No.22763 of 2017 by which, the order dated 30.09.2015 passed by the Sub-Divisional Officer cum Collector, Tohana District Fatehabad and order dated 11.04.2017 passed by the Commissioner, Hisar Division, has been dismissed on the ground of delay.

2. Learned counsel appearing on behalf of the appellant submits argues that though the order was passed on 30.09.2015 by the Collector but as the same was only forwarded to the Sub-Registrar, Tohana for implementation on 29.02.2016 therefore, the said date of endorsement is to be taken into account for computation of prescribed period of limitation for the purpose of filing the appeal against the order dated 30.09.2015, which fact has not been correctly appreciated by the learned Single Judge while upholding the order passed in appeal dated 11.04.2017 by which, the same was dismissed being time-barred.

3. We have heard learned counsel for the appellants and have gone through the records of the present case with his able assistance.

4. A bare perusal of the detailed order dated 30.09.2015 passed by the Sub-Divisional Officer cum Collector, Tohana District Fatehabad, copy of which has been annexed as Annexure P-5, would show that the same was passed in the presence of the learned counsel for the appellants, whose presence has been recorded. Further in the said order, it has been mentioned that the decision was pronounced in the open Court on 30.09.2015.

5. Learned counsel for the appellants has not been able to rebut the said fact hence, the argument raised that the detailed order dated 30.09.2015 passed by the Sub-Divisional Officer cum Collector, Tohana District Fatehabad was not passed on 30.09.2015 but on a later date, cannot be accepted.

6. Further, in the zimni order dated 30.09.2015, attached as Annexure P-7 by the appellant himself reads as under:-

“File put up, case was called, file perused and as per enclosed detailed order, the deficiency found in the sale deed is order to be recovered from the respondents. File after compliance be deposited to the record room.

*Sd/-
Collector, Tohana
30.09.2015”*

7. That being so, the argument of the learned counsel for the appellants that order dated 30.09.2015 passed by the Sub-Divisional Officer cum Collector, Tohana District Fatehabad, was passed at his back rather the same was anti-dated, cannot be accepted as in the zimni order, factors of detailed order passed on same day has been mentioned.

8. Further, the argument of the learned counsel for the appellants that the order dated 30.09.2015 passed by the Sub-Divisional Officer-cum-

Collector, Tohana, District Fatehabad, was not passed in his presence and that certain facts have been wrongly noted, would amount to deciding a disputed question of fact in the writ petition, which is otherwise not permissible as per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 2848 of 2021 titled as ***Shubhas Jain Vs. Rajeshwari Shivam and others***, decided on 20.07.2021, once disputed question of facts have been raised, this Court will have no jurisdiction to decide the same. The relevant paragraph 26 of the said judgment is as under :-

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”

9. Further, even as per judgment passed by the Hon'ble Supreme Court of India in ***Civil Appeal No.5074 of 1999 titled “Chairman Grid Corporation of Orissa Vs. Smt. Sukamani Das and anr.”***, decided on 15.09.1999. The relevant paragraphs of the said judgment are as under:—

“In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioner. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995. ”

10. Furthermore, the order dated 30.09.2015 passed by the Sub-Divisional Officer cum Collector, Tohana District Fatehabad enumerates

that the said order was passed in the open Court and in the presence of the appellant and concededly from passing of the order on the said date, the appeal so preferred against said order was beyond the prescribed period of limitation and keeping in view the facts and circumstances of the present case described hereinabove, the rejection of the appeal by the appellate authority being time-barred, has rightly not been upheld by the learned Single Judge.

11. Hence, in the absence of any perversity being pointed out in the impugned order dated 06.10.2017 passed by the learned Single Judge either on the basis of the facts or the settled principle of law, no ground is made out for any interference by this Court in the facts and circumstances of the present case and the present appeal is accordingly dismissed.

12. At this stage, learned counsel for the appellants submits that he may be permitted to approach the Civil Court, in case, permissible to him, in accordance with the law.

13. Ordered accordingly.

14. Pending miscellaneous applications, if any, shall stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

05-03-2026
Sapna Goyal

(VIKAS SURI)
JUDGE

NOTE: Whether speaking/reasoned: YES
Whether reportable : NO