



LPA-1544-2017 (O&M)

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

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**CM-3299-LPA-2017 &
CM-1981-LPA-2018 in
LPA-1544-2017 (O&M)**

Date of Decision :28.08.2025

H.N. Sharma

..Appellant

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Amit Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate for the appellant.

Mr. Aman Mittal, DAG, Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate for respondents No.2 & 3.

Mr. Alok Jain, Advocate for respondent No.6.

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Harsimran Singh Sethi, J. (Oral)

CM-3299-LPA-2017

1. Present application has been filed for condonation of delay of 1597 days in filing the present appeal.
2. Notice of the application was issued to the respondents.
3. Learned counsel for the respondents raises no objection for the grant of prayer as made in the present application.
4. Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 1597



days in filing the present appeal is condoned.

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1. Present appeal has been filed against the order dated 04.02.2013 passed by the learned Single Judge by which, the application filed by the appellant for restoration of the writ petition which was dismissed in default on 05.04.2011, has been dismissed on the ground that despite filing the application for restoration of writ petition, no instruction of the litigation concerned could be brought before the Court by the counsel for the appellant that whether the appellant herein, who was applicant before the learned Single Judge is ready to pay the market value of the plot in question.

2. It may be noticed that the non-appearance before the Court in the writ petition when the same was dismissed in default on 05.04.2011 was due to inaction on the part of the counsel for the appellant. The appellant was already 80 years old and unfortunately died thereafter during pendency of litigation. After coming to know that the writ petition has been dismissed in default, an application was filed by the appellant to restore the same. The application contained certain facts that the dismissal for non-prosecution was not due to inaction on the part of the appellant but due to the non-appearance of the counsel who had to appear before the Court. The said fact has gone un rebutted even during the course of hearing before this Court today.

3. We have heard learned counsel for the parties and have gone through the record with their able assistance.

4. It is a settled principle of law that as far as possible, the lis between the parties should be decided on merits unless and until it is proved that one of the party was not pursuing the remedy with due diligence and



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there is a consistent default at the hand of the party, only in such a condition the litigation is to be dismissed in default and not to be restored despite filing of application to restore the same.

5. In the present case, the default of not appearing before the Court is upon the counsel engaged by the appellant and there was no default on the part of the appellant.

6. Further, it is a settled principle of law that due to the default on the part of the lawyer by not appearing before Court, the client should not suffer.

7. Keeping in view the totality of the facts and circumstances, order dated 04.02.2013 passed by the learned Single Bench declining to restore the writ petition as well as order dated 05.04.2011 dismissing the writ petition in default, are set aside. The writ petition is restored to its original number and status to be listed before the appropriate writ Bench as per roster.

8. Civil miscellaneous application pending, if any, is also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

August 28, 2025
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No