



CWP-6655-2024

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

(256)

CWP-6655-2024

Date of Decision : 02.04.2025

Carrier Air Conditioning and Refrigeration Ltd.

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Vishal Sharma, Advocate and
Ms. Simran Chahal, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. AG, Haryana.

Mr. Amit Sharma, Advocate
for respondent No.2.

KULDEEP TIWARI, J.(ORAL)

1. Through the instant petition, cast under Articles 226/227 of the Constitution of India, a challenge is thrown to the order dated 16.11.2023 (Annexure P-6), whereby, the restoration application filed by the petitioner, has been dismissed, and order dated 30.07.2014 (Annexure P-3), wherethrough, the statutory appeal preferred by the petitioner was dismissed for want of prosecution.

2. Learned counsel for the petitioner in order to throw challenge to the orders (supra), submits that the petitioner's appeal was pending before the learned Appellate forum concerned, for dated 30.07.2014, for orders on verification of records. On the said date, learned counsel for the petitioner caused appearance before the authorities concerned, and he was informed that next date will be informed in the matter. However, in the interregnum, the



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appeal was dismissed for want of prosecution, and apparently, there is a factual error in recording the said order, passed by the statutory authority concerned. He further submits that an application, seeking restoration of the appeal was filed on dated 16.09.2014, which was kept pending for about 09 years, and unfortunately, it was dismissed only, on account of delay of 17 days, in filing. He further submits that after dismissal of the appeal, the respondents have now issued the prohibitory order dated 16.02.2024 (Annexure P-8), for sealing of bank account of the petitioner. Finally, learned counsel for the petitioner submits that the learned Appellate Authority concerned, instead of adjudicating the appeal on merits, has dismissed the application for restoration, vide order dated 16.11.2023 (Annexure P-6), on hyper technical ground, i.e. delay of only 17 days in filing the said application. In addition, he submits that the petitioner to show his *bona fide*, has already deposited the entire disputed amount, and took a stand that the petitioner still has a right for adjudication of the appeal.

3. At the time of issuing notice of motion, the co-ordinate Bench of this Court, by drawing an order dated 20.03.2024, had stayed the operation of the impugned prohibitory order dated 16.02.2024 (Annexure P-8). Furthermore, the co-ordinate Bench of this Court, by drawing an order dated 28.08.2024, passed in CM-13502-CWP-2024, had also stayed the operation of the show cause notice dated 15.07.2024.

4. Today, learned counsel for respondent No.2, has caused appearance in the Court, and has opposed the prayer made by the petitioner through the instant petition. However, he agrees to the effect that the appeal ought to have been decided on merits.



5. This Court has considered the submissions, as made by the learned counsel for the parties concerned, and is of the considered view that the instant petition is amenable to be allowed for the hereinafter extracted reasons :-

(i) this Court can infer from the pleadings that absence of the petitioner on the date when the appeal was dismissed for non-prosecution, was neither intentional, nor effected with malice, rather it was on account of the reasons, as explained in the instant writ petition;

(ii) though there is a delay of 17 days in filing the application for restoration, strangely, that application remained pending for about 09 years. The adjudicatory authority ought to have decided the appeal, instead of dismissing the application for restoration, within such a long duration;

(iii) the petitioner, in order to show his bona fide, has already deposited the entire disputed amount, therefore, his statutory right for adjudication, by the first Appellate Authority, cannot be snatched only on account of hyper technical ground.

6. In view of the above, the instant petition is **allowed** and the impugned order dated 16.11.2023 (Annexure P-6) and order dated 30.07.2014 (Annexure P-3), is hereby, **set aside**. The appeal preferred by the petitioner before the learned Appellate Authority concerned, is ordered to be restored to its original number.

7. Since the *lis* is pending since 2014, therefore, further mandamus is passed upon the learned Appellate Authority concerned, to decide the appeal, within a period of four months, from the date of receipt of certified copy of this order/judgment.



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8. In the meanwhile, the operation of the prohibitory order dated 16.02.2024 (Annexure P-8), as well as show cause notice dated 15.07.2024, for damages, which was stayed by the co-ordinate Bench of this Court, would remain in effect, till the final decision of the appeal is taken by the learned Appellate Court concerned.

9. Ordered accordingly.

(KULDEEP TIWARI)
JUDGE

April 02, 2025
Manpreet

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