



272

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

CR-2529-2021

Date of Decision: 22.04.2025

The Managing Director, PEPSU Road Transport Corporation and Others

...Petitioners

Versus

Pritam Singh and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Harsh Chopra, Advocate and
Mr. Kavinder Singh Chhibber, Advocate
for the petitioners (through Hybrid mode).

Mr. Amandeep Singh Manaise, Advocate
for respondent No.1.

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VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition assails the order dated 17.08.2021 (Annexure P-5) passed by the Court of learned Additional District Judge, Gurdaspur vide which the application preferred by the petitioners for restoration of the application filed under Section 5 of the Limitation Act, 1963 (for short '1963 Act') which had been dismissed in default on 11.09.2018 was dismissed.

2. The facts, as emanating from the revision petition, are that respondent No.1/plaintiff Pritam Singh filed a suit for declaration which was decreed vide judgment and decree dated 23.01.2017 (Annexure P-1). Aggrieved by the said judgment and decree, an appeal was preferred by the petitioners/defendants. Since the appeal was barred by time, an application (Annexure P-2) under Section 5 of the 1963 Act for condonation of delay of 200 days in filing the appeal was moved. Issues in the said application were framed on 16.04.2018 and the matter was fixed for evidence of the applicants. However, on 11.09.2018, the application for

condonation of delay was dismissed in default (Annexure P-3). Thereafter, an application for restoration (Annexure P-4) was moved which was dismissed vide the impugned order dated 17.08.2021 (Annexure P-5), leading to the filing of the present revision petition.

3. I have heard learned counsel for the parties.

4. Learned counsel for the petitioners submits that while evidence in the application moved under Section 5 of the 1963 Act was going on, on 08.08.2018, the case was adjourned to 01.10.2018 which was the date noted by counsel for the petitioners. However, it subsequently transpired that this date had wrongly been noted and actually the date fixed was 11.09.2018 and on the said date, the application was dismissed in default. He submits that upon coming to know about the dismissal of application on 01.10.2018, an application for obtaining the certified copy of the order dated 11.09.2018 was moved which was prepared on 12.11.2018 whereafter, the application for restoration was moved on 06.12.2018. Learned counsel submits that the non-appearance of counsel representing the petitioners before the Court on 11.09.2018 was unintentional and on account of a *bona fide* mistake. He submits that the Court of learned Additional District Judge, Gurdaspur, while taking a hypertechnical view rejected the application for restoration of the application for condonation of delay. Learned counsel submits that the impugned order is not sustainable and is liable to be set aside.

5. *Per contra*, learned counsel for respondent No.1 has opposed the prayer made by learned counsel for the petitioners and has submitted that firstly there was a delay of 200 days in filing the appeal and even the application for condonation of delay was dismissed on account of non-appearance of learned counsel for the petitioners. He submits that the petitioners are non serious in pursuing their remedies and, therefore, the Court of learned Additional District Judge, Gurdaspur rightly dismissed the application for restoration.

6. I have considered the submissions made by learned counsel for the parties.

7. The suit filed by respondent No.1/plaintiff Pritam Singh was decreed vide judgment and decree dated 23.01.2017 (Annexure P-1) and Pritam Singh was held to be entitled to increments in pensionary benefits for the services rendered by him during the period of 2nd National Emergency from 12.10.1972 to 25.03.1977 alongwith interest @ 6% per annum. Directions were issued to the defendants therein to pay the benefits to Pritam Singh as per the Punjab Government Notification (Ex. P-7) within a period of two months from the date of the judgment.

8. Aggrieved by the aforesaid judgment, an appeal was preferred by the petitioners *al beit* with a delay of 200 days. The appeal was accompanied by an application under Section 5 of the 1963 Act for condonation of delay of 200 days. The First Appellate Court framed issues on the said application on 16.04.2018 and fixed the matter for evidence. During the course of evidence, the application for condonation of delay was dismissed in default on 11.09.2018. An application for obtaining the certified copy of the said order was moved on 01.10.2018. The said certified copy was prepared on 12.11.2018 and the application for restoration was filed on 06.12.2018. The contention of learned counsel for the petitioners that their counsel wrongly noted the date as 01.10.2018 appears to be genuine. Nothing was to be gained by the petitioners by not pursuing their application diligently. Having moved the application for obtaining the certified copy of the order dismissing the application for condonation of delay in default, the application for restoration was promptly filed. In the considered opinion of this Court, the Court of learned Additional District Judge, Gurdaspur took a hypertechnical view in rejecting the application for restoration. It has to be borne

in mind that matters should be decided on merits rather than being rejected on technicalities.

9. In view of the above, the present revision petition is allowed. The order dated 17.08.2021 (Annexure P-5) is set aside and the application for restoration is allowed. The application for condonation of delay moved by the present petitioners is restored to its original number.

Since considerable time has elapsed, a direction is issued to the concerned Court to decide the said application within a period of three months from today.

(VIKRAM AGGARWAL)
JUDGE

22.04.2025

Prince Chawla

Whether speaking/reasoned :

Yes/No.

Whether reportable :

Yes/No.