

**Krishna Devi and ors. Vs. Sham and ors**

**Krishna Devi and ors. Vs. Sham and ors**

**SooperKanoon Citation :** [sooperkanoon.com/1061416](http://sooperkanoon.com/1061416)

**Court :** Punjab and Haryana

**Decided On :** Aug-05-2013

**Appellant :** Krishna Devi and ors.

**Respondent :** Sham and ors

**Judgement :**

C.M.No.15775-CII o

1. .IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CM No.15775-CII of 2013 in F.A.O.No.5189 of 2011 Date of Decision: August 5th, 2013 Krishna Devi and ors...Applicants-Appellants Versus Sham and Ors ...Respondents CORAM : HON'BLE Mr.JUSTICE VIJENDER SINGH MALIK 1 Whether Reporters of local papers may be allowed to see the judgment?.

2.Whether to be referred to the Reporters or not?.

3.Whether the judgment should be reported in the Digest?.

Present Mr.Sunil Saharan, Advocate, for the applicants-appellants.

**VIJENDER SINGH MALIK, J.**

This is an application brought under order 41 rule 19 read with section 151 CPC for restoration of FAO No.5189 of 2011 which has been dismissed for want of prosecution on 18.7.2013.

Learned counsel for the applicants-appellants has claimed that the appeal was fixed before this court on 16.11.2011 for hearing and after that notice of motion was issued on 24.2.2012.

According to him, the counsel for the appellants came present before the court almost on each and every date in the above noted appeal.

According to him, on 18.7.2013 the counsel for the appellant could not attend the court as he had to leave for his native place at Hisar on account of health problem of his father.

He, however, contacted his colleague, Mr.Pankaj Mehta, C.M.No.15775-CII o

2. .Advocate to appear in the court and make a request for adjournment on behalf of counsel for the appellants.

On account of his busy schedule, he also could not appear before the court on 18.7.2013 and, consequently, this court dismissed the appeal vide order dated 18.7.2013 for want of prosecution.

The absence of counsel for the appellants on 18.7.2013 was neither intentional nor willful rather it was due to the reasons mentioned above.

The application is supported by affidavit.

The submissions made by learned counsel for the applicants are nothing but repetition of the plea taken in the application.

The submission that counsel for the appellants appeared on each and every date of hearing is incorrect.

not only on 18.7.2013, the date when the appeal was dismissed for want of prosecution, none appeared for the appellants on 5.2.2013 and 31.10.2012, the previous two dates.

Since it was a case of continuous absence of counsel for the appellants for three consecutive dates, the appeal was dismissed for want of prosecution.

This is not a case of absence on a solitary date.

The absence is consistently on three consecutive dates.

The only plea is that the counsel had to move to Hisar in connection with health problem of his father.

He claims to have asked Mr.Pankaj Mehta, Advocate to appear on 18.7.2013, on his behalf, who failed to appear in the case.

No affidavit of Mr.Pankaj Mehta, Advocate has been filed to support the said submission.

In these circumstances, I do not find the absence of learned counsel for the appellants to be for any acceptable reason.

The C.M.No.15775-CII o

3. .application for restoration of the appeal is, consequently, dismissed.

(VIJENDER SINGH MALIK) JUDGE August 5th, 2013 som

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**