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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 975/2017**

KUMAON MOTOR OWNERS UNION LIMITED .....Petitioner

Through: Ms. Gauri Swarup Bansal, Advocate.

versus

THE ASSISTANT PROVIDENT FUND COMMISSIONER .....Respondent

Through: Ms. Inderjeet Sidhu, Advocate.

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

O R D E R

% 23.01.2025

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 23135/2024 (for restoration), CM APPL. 23136/2024 (delay of 12 days in filing of CM APPL.23135/2024) & CM APPL. 56612/2024 (delay of 30 days in filing reply)

1. The petition was dismissed in default on 05.09.2022. Thereafter, restoration application CM APPL. 57200/2023 was filed, explaining that the erstwhile counsel had passed away after hospitalization. Notice of the application was issued. But again there was default in appearance on the part of petitioner, so even the restoration application was dismissed in default on 28.02.2024. Thereafter, petitioner filed another restoration application CM APPL.23135/2024 with delay condonation application CM APPL. 23136/ 2024, explaining that on 28.02.2024, learned counsel for petitioner could not appear as she recorded wrong date in her diary. CM APPL. 56612/2024 has been filed by respondent seeking condonation of delay in filing reply, which

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is allowed.

2. The above circumstances clearly show that the petitioner is not diligent in pursuing the proceedings. Despite that, I would prefer to be guided by the cardinal principle of justice that disputes should be decided on merits and not defaults. Especially where the non applicant can be compensated through costs, the court can give another opportunity.

3. Considering these circumstances, the above applications are allowed and consequently, CM APPL. 57200/2023 is restored and allowed subject to costs of Rs.10,000/- to be paid by petitioner to the respondent within four weeks.

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4. List for hearing on 05.08.2025.

GIRISH KATHPALIA, J

JANUARY 23, 2025/*ry*

Click here to check corrigendum, if any

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