

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

**AT CHANDIGARH**

**Civil Revision No.6739 of 2015 (O&M)**

**Date of decision: 09.10.2015**

**M/s Rahul Dairy & Allied Products Pvt. Ltd. and another**  
**.....Petitioners**

**versus**

**M/s Goel Agency Pvt. Ltd. and others**  
**.....Respondents**

**CORAM: Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.Chandra Kumar Jha, Advocate for the petitioners

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

**Kuldip Singh, J. (Oral)**

Impugned in the present revision is the order dated 9.9.2015 (Annexure P10), passed by the learned Additional District Judge, Ludhiana affirming the order dated 7.5.2014 (Annexure P9), passed by the the learned Additional Civil Judge, Senior Division, Ludhiana vide which the application dated 25.5.2013 of the present petitioners for restoration of the application filed under Order IX Rule 13 CPC for setting aside the exparte judgment and decree dated 11.8.2004 was dismissed.

I have heard learned counsel for the petitioners and have also carefully gone through the file.

It comes out that a money decree was passed against the present petitioners on 11.8.2004. It comes out that the present petitioner was ex-parte in the said decree. He filed an application

under Order IX Rule 13 CPC, which was dismissed in default on 7.8.2008. Thereafter, the present application was filed on 25.5.2013 for restoration of the earlier application filed under Order IX Rule 13 CPC. Lower Court has observed that the applicant was sleeping over the matter for five years and therefore, it did not find any reasonable ground to restore the said application.

Learned counsel for the petitioners has argued that the perusal of the interim orders reproduced in the grounds of petition would show that on 7.8.2008, in the execution, JD i.e. the present petitioners were ex-parte. The application under Order IX Rule 13 CPC was being taken up along with the said execution. Therefore, the same was dismissed. However, it is argued that from 9.5.2009 onwards, their counsel had been appearing in the said execution and that he was not aware that his application under Order IX Rule 13 CPC has been dismissed.

The perusal of the interim orders show that from 7.8.2008 to 21.3.2009 i.e. on four dates, counsel for the JD was not appearing. Thereafter, he started appearing. Therefore, it was for the counsel to inspect the file as to what has happened in his absence. Present application was filed after five years. It is a money decree and the execution of the same is being delayed. Findings of facts have been recorded by the Courts below. No ground is made out to interfere.

Learned counsel for the petitioner has relied upon the authorities in Rafiz and another v. Munshilal and another, 1981(2) SCC 788 and G.P.Srivastava v. R.K.Raizada and others, 2000(2) RCR (Civil) 161, Khema v. Smt.Ram Dei, 2006(2) RCR (Civil) 13,

*Continental Construction Ltd. v. Continental Float Glass Ltd., 1997*

*AIR (Delhi) 147.* However, the said authorities are distinguishable from the facts of the present case. It depends upon facts of each case whether delay on the part of a party or the counsel is to be condoned or not.

In view of above discussions, the revision stands dismissed.

**09.10.2015**

*gk*

**(Kuldip Singh)  
Judge**