

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CR No.6518 of 2014.
Decided on:-February 06, 2015.

Dr. Rajiv Grover.Petitioner.

Versus

Umesh Kumar Goswami.Respondent.

(2) CR No.6522 of 2014.

Dr. Rajiv Grover.Petitioner.

Versus

Umesh Kumar Goswami.Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Lokesh Sinhal, Advocate
for the petitioner.

Mr. B.S. Choudhary, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

This order shall dispose of two petitions, referred to above, filed
by the plaintiff, petitioner herein, for setting aside the impugned orders dated

14.7.2014 (Annexure P-6 in CR No.6518 of 2014 and Annexure P-7 in CR No.6522 of 2014) as both these petitions are interlinked and interconnected with each other. However, for convenience and clarity, facts have been taken from CR No.6518 of 2014.

2. A suit under Order XXXVII CPC is pending adjudication before a civil court at Gurgaon wherein an application for seeking leave to defend was granted to the defendant condoning delay vide order dated 14.7.2014. This order is under challenge in this revision petition.

3. In this revision petition, plea of the plaintiff, petitioner herein, is that there is no provision for condonation of delay in making application for leave to defend a suit filed under Order XXXVII CPC which provides for a summary procedure.

4. As per Order XXXVII CPC, a defendant who wants to contest the suit is to make an application seeking leave to defend within a stipulated period after his service. In the present case, concedingly, service was effected on the defendant on 23.12.2012 which was Sunday and the courts were closed from 24.12.2012 for winter vacations.

5. Considering all these aspects, the lower court came to a firm finding that there are triable issues and thus, leave to defend is to be allowed and further felt convinced that, in fact, there was no delay but because of winter vacations and the impression with the plaintiff that the case was fixed for 8.1.2013, in appearance as also in filing application seeking leave to defend, delay was caused. Finding the cause for delay to be justified, and finding existence of triable issues, applications for leave to defend as also for condonation of delay, were allowed.

6. There is no dispute that when there are triable issues, leave to

defend is to be allowed. Even though suit is summary in nature and had been filed under Order XXXVII CPC, pleadings of the parties reveal that there are triable issues and thus, leave to defend was necessary. Reference in this regard may be made to ***M/s Mechalec Engineers and Manufacturers Versus M/s Basic Equipment Corporation AIR 1977 Supreme Court 577; Puri International (P) Ltd. Versus D.L.F. Universal Limited 2007(1) PLR 409 (P&H); Sukhdev Versus Kirpal Singh 2006(4) RCR (Civil) 453 (P&H); Pawan Kumar Versus Jagdev Singh 2011(5) RCR (Civil) 206 (P&H); Joginder Singh Versus Kuldip Singh and another 2002(3) CCC 613 (Delhi); Santosh Kumar Versus Bhai Mool Singh AIR 1958 Supreme Court 321; and M/s T.C.I. Finance Limited Versus M/s Sree Vani Printers Pvt. Ltd. & another 2001(1) Civil Court Cases 522 (AP).***

7. So far as matter of delay is concerned, reference may be made to sub-rule 7 of Rule 3 of Order XXXVII CPC which for ready reference is appended as below:

“The Court or Judge may, for sufficient cause shown by the defendant excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.”

8. For sufficient cause having been shown by the defendant, delay in entering an appearance or in applying for leave to defend, the delay can be condoned is a matter of no dispute by now. Reference may also be made to a Full Bench judgment of this Court in ***State of Haryana Versus Hindustan Machine Tools Limited and others 2014(4) RCR (Civil) 1040*** wherein para No.6 of the judgment, it was held as under:

“6. Section 5 of 1963 Act enables the Court to admit an appeal or an application after the expiry of prescribed period of limitation on sufficient cause being shown for the delay. It is meant to condone the default of the party wherever it is able to satisfy that sufficient cause exists. Thus, sufficient cause is sine

qua non for exercise of discretion for condoning delay under this provision. The discretion, however, is to be judicial and not arbitrary. "Sufficient cause" has not been defined by the legislature in the 1963 Act but is to be ascertained on the individual facts of each case."

9. The trial court has found sufficient cause to condone the delay in making an application for appearance as also for leave to defend which is neither bad on facts nor in law.

10. In view of the judgments ***Vijaya Home Loans Limited Versus M/s Crown Traders Limited and another 1998 AIR (Delhi) 183; Shamim Ahmed Versus Kanhaiya Lal Seth 2000(2) RCR (Civil) 222 (Delhi); D.C.M. Financial Services Limited Versus Khaitan Hostombe Spinels Limited 1998(6) AD (Delhi) 696*** and ***M/s Universal Fasteners and others Versus Bank of Baroda and another 1986(1) PLR 77 (P&H)***, cited by counsel for the petitioner-plaintiff, with due deference to the law laid down therein, particularly when the delay in filing the application for putting in appearance as also in seeking leave to defend has been found to be justified by the court below and rightly so, do not do any good to the cause of the plaintiff, petitioner herein.

11. Keeping in view the totality of facts and circumstances as discussed earlier, the applications for leave to contest the suit and for condoning the delay were rightly allowed by the lower court vide impugned order dated 14.7.2014 (Annexure P-6 in CR No.6518 of 2014) and (Annexure P-7 in CR No.6522 of 2014) and since the applications of the defendant, respondent herein, for condonation of delay in appearance and for leave to defend were allowed, the application under Order XXXVII Rule 2(3) CPC filed by the plaintiff, petitioner herein, to decree the suit had rightly become infructuous.

12. Sequelly, affirming the impugned orders, both these petitions, being devoid of any merit, are dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

February 06, 2015

'Yag Dutt'

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes