

CM No.432-CI of 2015 in/and
EFA No.1 of 2015 (O&M)

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

**CM No.432-CI of 2015 in/and
EFA No.1 of 2015 (O&M)**

Date of decision:15.01.2015

Punjab Agro Food Grains Corporation

...Appellant

Versus

M/s Sahara Rice Mills, Bhawanigarh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Anupam Singla, Advocate,
for the appellant.

Rakesh Kumar Jain, J.

This appeal is filed along with an application for condonation of delay of 1892 days.

In brief, respondent no.1 had entered into an agreement with the appellant on 10.11.1999 for custom milling of the paddy. In pursuance of the agreement, the appellant delivered 42399 bags of Grade 'A' paddy weighing 27599.35 quintals to respondents no.1 and 2 for custom milling. Respondents no.1 and 2 were to deliver 18280.11.685 quintals of rice to the FCI in the account of the appellant-Corporation, however, respondents no.1 and 2 delivered only 1135.80 quintals of rice and remaining 1714.685 quintals of rice were not delivered, as a result thereof there was a dispute between the parties and the matter was referred to the sole arbitrator who gave his award on 10.09.2003 and ordered the respondent-Mill to pay to the

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appellant-Corporation an amount of ₹1,71,51,297.08/- as principal amount with interest @ 18% p.a. w.e.f. 06.03.2000 till the date of recovery along with ₹20,000/- as arbitration cost. The appellant-Corporation filed the execution but it was consigned unsatisfied due to the pendency of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996.

On 28.02.2006, the appellant again filed an application for execution of the award dated 10.09.2003 for recovery of ₹3,56,58,711.05/- as on 28.02.2006.

During the pendency of the execution, the property of respondent no.1 was attached vide order dated 27.02.2007. On 16.07.2008, respondent no.3 filed an application under Order 21 Rule 58 of the Code of Civil Procedure, 1908 (here-in-after referred to as the "CPC") alleging that at the time of passing of the attachment order, respondent no.1 was not the owner of the property as it was sold by respondent no.1 to M/s Ganesh Ji Rice and General Mills and a mutation no.3132 was also sanctioned in favour of the said Mill. The said Mill, namely, M/s Ganesh Ji Rice and General Mills had to pay the amount of ₹99,95,288.38/- to the Indian Overseas Bank, Mohali and the said bank gave public notice in different newspapers inviting tenders from the general public for the sale of the property in dispute after attaching the same under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. According to respondent no.3, the disputed property was purchased by it for ₹42,00,000/- and the sale deed was executed in its

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favour on 17.11.2005 and thus it is alleged that it is in possession of the disputed property since 14.11.2005. The application filed by respondent no.3 was thus allowed by the Executing Court on 10.08.2009 and the property attached vide order dated 27.02.2007 was released from attachment.

Thus, the order dated 10.08.2009 has been challenged in the present appeal. In the application for condonation of delay, it has been mentioned that the counsel appearing on behalf of the appellant before the Executing Court did not inform regarding the passing of the order dated 10.08.2009 and on 20.11.2010, the execution application filed by the appellant was ordered to be consigned to the record due to non-furnishing of details of any other properties owned by respondent no.1 and liberty was granted to the appellant to revive the same as and when details of the properties of the respondent no.1 is known to it. It is further alleged that the Executing Court vide order dated 06.06.2013 issued notice to both the parties in the execution proceedings in which the appellant had appeared on 02.07.2013 and engaged a new advocate who inspected the record and came to know about the order dated 10.08.2009 and vide letter dated 05.12.2013 advised the appellant to challenge the impugned order dated 10.08.2009. Thus, the sum and substance of the application is that due to mistake of the advocate appearing on behalf of the appellant in the execution who did not inform them about the order dated 10.08.2009, the delay has occurred.

After hearing learned counsel for the appellant and after examining the record, I am of the considered opinion that there is no merit

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in the application for condonation of delay as nothing has been mentioned by the appellant as to what action has been taken by the appellant against the defaulting advocate who had appeared on their behalf when the order dated 10.08.2009 was passed and who was obliged to inform the appellant. Moreover, the appellant is a Corporation and have a legal section and there must have been legal persons to pursue the litigation before the Executing Court but nothing has been mentioned in the application for condonation of delay as to why there was such a great slumber on the part of the appellant in not pursuing the case before the Executing Court especially when they have got an award of a huge amount.

In my considered opinion, the appellant themselves are to be blamed for not looking after the litigation diligently and have tried to shift their burden upon the advocate against whom no action has been taken by them either by making a complaint to the Bar Association of which he is a member or the Bar Council who had issued him the license to practice law.

In view of the aforesaid discussion, I do not find any merit in the application for condonation of delay and hence, the same is hereby dismissed.

Resultantly, the appeal is also dismissed.

January 15, 2015
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Rakesh Kumar Jain
Judge