

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CR No.6044 of 2016  
Date of decision:09.12.2016

M/s R.G.Y.Alloys (P) Ltd.

... Petitioner

Vs.

M/s Adhunik Metaliks Limited

... Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Adarsh Jain, Advocate  
for the petitioner.

Mr. Kunal Dawar, Advocate  
for the respondent.

**AMIT RAWAL J. (Oral)**

The petitioner-defendant is aggrieved of the impugned order dated 05.05.2016, whereby, an application seeking condonation of delay in not putting appearance as per the provisions of Rule 3 of Order 37 of Code of Civil Procedure (hereinafter referred to as "CPC") in a suit filed under Order XXXVII Rule 1 CPC, has been dismissed.

Mr. Adarsh Jain, learned counsel for the petitioner-defendant submits that report of process server (Annexure P-3) is not in accordance with the provisions of sub-rule 1 of Rule 3 of Order 37 CPC. Even if assuming to be correct and not disputed one, the application under Section 5 of the Limitation Act, has been dismissed summarily. There is no compliance as only copy of summons has been affixed without any copy of the plaint and annexures. The petitioner did not know about the pendency of

the suit filed under the aforementioned provisions of the law, though had put in appearance on 18.02.2015 and 10 days expired on 08.02.2015. The factum of appearance on 18.02.2015 is reflected from the order dated 18.02.2015 (Annexure P-4). He further submits that while dismissing the application without there being any application for leave to defend has also been adjudicated as if the petitioner had moved an application seeking leave, thus, the order under challenge is not liable to be sustained.

Mr. Kunal Dawar, learned counsel for the respondent-plaintiff submits that on going through the report dated 29.01.2015 of the process server, it is evident that there was apparent refusal to receive the summons and therefore, rightly so, the application seeking condonation of delay was dismissed as the absence was willful and intentional. No concession of condonation, as per the provisions of Rule 3 of Order 37 CPC, is maintainable. He does not dispute that the Court below ought not to have rejected the deemed application for leave to defend and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that the report apparently and *prima facie* leaves to an irresistible conclusion that the petitioner-defendant had intentionally refused to accept the summons but equally so, there is no compliance of the provisions of sub-rule 1 of Rule 3 of Order 37 CPC. A copy of the plaint and annexures so attached have not been affixed as the report is conspicuously wanting. The order of the Court below qua declining of the leave to defend in the absence of any application was also not called for, yet

I cannot remain oblivious of the fact that the petitioner's approach had been tardy and negligent as he had put in appearance after 10 days, i.e., on 18.02.2015 (Annexure P-4) and filed the application for condonation of delay on 03.04.2015.

In such circumstances, I deem it appropriate to grant 10 days time to the petitioner-defendant to file an application seeking leave to defend and the appearance shall be deemed to be within a period of limitation, in essence, the application seeking condonation of delay is allowed subject to costs of ₹50,000/- to be paid to Mr. Kunal Dawar, Advocate for the respondent-plaintiff in the High Court against the valid receipt. In case, the application for leave to defend is filed within a period of 10 days, the same shall be decided in accordance with law.

Accordingly, the revision petition stands disposed of.

**(AMIT RAWAL)**  
**JUDGE**

**December 09, 2016**  
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No