

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3411 of 2015

Date of Decision: 17.11.2017

M/s EMU Lines Pvt. Ltd.

..Petitioner

Vs.

Sh.R.P.Singh

..Respondent

CORAM: HON'BLE MR.JUSTICE B.S.WALIA

Present: Mr.Yash Paul Khullar, Advocate for the petitioner.

Mr.P.K.Kataria, Advocate for the respondent.

B.S.WALIA, J.

CM No.10578-CII of 2015

Application is for exemption from filing certified copies of Annexures.

2. For the reasons as are mentioned therein, the application is allowed subject to all just exceptions. Exemption prayed for is granted.

CR No.3411 of 2015

3. Challenge in the instant petition is to order dated 18.1.2015 i.e. Annexure P-7 passed by the learned Appellate Court vide which the application under Section 5 of the Limitation Act i.e. Annexure P-5 filed by the petitioner for condonation of delay in late filing of the appeal, has been dismissed resultantly, the appeal (Annexure P-4) has also been dismissed on grounds of delay. Further prayer is for setting aside order dated 14.1.2015 and for remanding the matter to the Appellate Court to decide the appeal on merits.

4. Brief facts of the case leading to the filing of the present petition as set up by the plaintiff-petitioner are that the plaintiff-petitioner is carrying on the business of Freight Carrier at Delhi. The plaintiff-petitioner on account of certain claims by it against the respondents called the respondent to Delhi to settle the matter vide letter dated 03.05.2000. Despite the defendant-respondent promising to repay the money as well as documents i.e. office record, account books, goods furniture etc. lying at Ludhiana office, needful was not done whereupon final notice dated 01.12.2000 was sent by the plaintiff-petitioner to the defendant-respondent but to no avail. In the circumstances, the plaintiff-petitioner filed a suit for recovery of Rs.3,09,631/- i.e. Rs.2,64,001/- as principal and Rs.47,230/- as interest till 31.1.2001. Despite service, defendant-respondent failed to put in appearance, therefore, was proceeded against ex parte. Thereafter, on the basis of ex parte evidence, the suit of the plaintiff-petitioner was decreed by the trial Court vide its judgment and decree dated 13.12.2001-Annexure P-1 for recovery of Rs.2,62,401.35/- alongwith proportionate costs.

5. On the defendant-respondent filing an application under Order 9 Rule 13 of the CPC, the ex parte judgment and decree was set aside on 11.5.2007. Thereafter, the defendant-respondent filed an application under Order 7 Rule 11 CPC and the same was allowed by the learned trial Court by holding that the entire cause of action had arisen at Ludhiana hence, the Court at Delhi had no jurisdiction therefore, returned the plaint vide order dated 3.10.2007-Annexure P-2.

6. On return of the plaint, the plaintiff-petitioner filed a suit for recovery of Rs.3,09,631.35 in the Court of competent jurisdiction at Ludhiana. Initially, the case was pending before the Court of

Mrs.N.S.Shilpa, the then Civil Judge, Ludhiana. Thereafter, the said case was transferred to the Court of Ms.Pushpa Rani, the then Civil Judge (Jr.Divn.) Ludhiana. On 30.8.2012, the case was listed for hearing at Sr.No.9 in the cause list, however, the same was adjourned by the Court of Ms.Pushpa Rani, the then Civil Judge (Jr.Divn.) Ludhiana to 10.10.2012. On the adjourned date i.e. 10.10.2012, the case was not listed in the cause list of Ms.Pushpa Rani, Civil Judge (Jr.Divn.)Ludhiana. plaintiff-petitioner tried utmost to locate the file but was not successful as neither any register was maintained by the Ahlmad of the Court of Ms.Pushpa Rani, Civil Judge (Jr.Divn.) Ludhiana nor was any official willing to tell the date or other particulars of the case. It is the stand of the plaintiff-petitioner that in the circumstances, application dated 15.2.2013 was addressed to the Hon'ble Inspecting Judge requesting that the Court of Ms.Pushpa Rani, Civil Judge (Jr.Divn.) Ludhiana be directed to trace out the file so that further proceedings could be taken out.

7. On 5.4.2013, the petitioner learnt that the aforesaid civil suit was transferred to the Court of Sh.B.K.Sharma, the then Civil Judge (Sr.Divn,) Ludhiana from the Court of Ms.Pushpa Rani, Civil Judge (Jr.Divn.) on 10.10.2012 and the same had already been dismissed vide ex parte judgment and decree dated 12.12.2012 (Annexure P-3). The plaintiff-petitioner learnt about the ex parte judgment and decree dated 12.12.2012 only on 5.4.2013 whereupon immediately an appeal was filed before the learned lower Appellate Court on 22.4.2013 (Annexure P-4) alongwith an application under Section 5 of the Limitation Act (Annexure P-5) for condonation of delay of 98 days in filing the appeal duly supported with an affidavit of the plaintiff-petitioner.

8. Defendant-respondent on receipt of notice contested the application under Section 5 of the Limitation Act by filing reply (Annexure P-6). Eventually, the Appellate Court dismissed the application under Section 5 of the Limitation Act vide order dated 14.1.2015, resultantly, main appeal was also dismissed on grounds of limitation (Annexure P-7).

9. Learned counsel for the petitioner contended that the learned lower Appellate Court failed to consider that the plaintiff-petitioner explained the delay of 98 days in late filing of the appeal by giving convincing and satisfactory reasons but the impugned order was passed primarily by relying upon order dated 10.10.2012 wherein presence of counsel for the plaintiff-petitioner is recorded whereas on the said date, counsel for the plaintiff-petitioner was not present and his presence was marked in routine manner. Secondly, there was no intentional delay on the part of the petitioner in not having filed the appeal within the period of limitation, and the expression "Sufficient cause" had to be considered liberally. Reliance has also been placed by the counsel on the decision of the Supreme Court in the case of ***Collector, Land Acquisition, Anant Nag and another Vs. M/s Katiji and others, AIR 1987 SC 1353*** wherein it was held that there was no presumption that delay was occasioned deliberately or on account of culpable negligence or malafide and that a litigant did not stand to benefit by resorting to dilatory tactics. Learned counsel contends that in the circumstances, the impugned order was legally unsustainable, consequently, the revision petition was liable to be accepted, impugned order set aside and the matter remanded to the learned lower Appellate Court to decide the appeal on merit.

10. Per contra, learned counsel for the respondent has contended

that the plaintiff-petitioner had failed to substantiate sufficient cause for not filing the appeal within the stipulated period of time because as per the showing of the plaintiff-petitioner, the plaintiff-petitioner could not ascertain the court where the case was listed on 10.10.2012 and the efforts to locate the same on 10.10.2012 proved to be futile. Learned counsel for the respondent contended that once the plaintiff-petitioner was unsuccessful in ascertaining the court where the case was listed on 10.10.2012 nor could locate the file from the Ahlmad of the Court of Ms.Pushpa Rani, Civil Judge (J.D.) Ludhiana on account of his non maintaining any register it was very surprising that the plaintiff-petitioner then maintained a stoic silence for a period of more than four months and only thereafter, thought of addressing an application to the Hon'ble Inspecting Judge on 16.2.2015 to direct the Court of Ms.Pushpa Rani, Civil Judge(Jr.Divn.) Ludhiana to trace out the file in order to enable the plaintiff-petitioner to take out further proceedings. Learned counsel for the respondent contended that no proof whatsoever had been attached by the plaintiff-petitioner of having addressed an application to the Hon'ble Inspecting Judge nor was any response as per the plaintiff-petitioner received from the office of the Hon'ble Inspecting Judge whereafter the plaintiff-petitioner came to know on 5.4.2013 about the aforesaid civil suit having been transferred to the Court of Sh.B.K.Sharma, Civil Judge (S.D.) Ludhiana from the Court of Ms.Pushpa Rani, Civil Judge (J.D.) Ludhiana on 10.10.2012 and the same having been dismissed vide ex parte judgment and decree dated 12.12.2012. Learned counsel for the respondent contended that no details had been given as to how in the circumstances, the knowledge was acquired on 5.4.2013 of the case having been transferred to the Court of Sh.B.K.Sharma, Civil Judge (S.D.)

Ludhiana from the Court of Ms.Pushpa Rani, Civil Judge (Jr.Divn.) Ludhiana on 10.10.2012 and of the civil suit having been dismissed vide ex parte judgment and decree dated 12.12.2012. Learned counsel for the respondent contended that the same revealed beyond an iota of doubt that there was complete and deliberate inaction on the part of the plaintiff-petitioner particularly in the background of the recording of the presence of counsel for the plaintiff in the order sheet on 10.10.2012. Learned counsel for the respondent contended that the proceedings recorded in the Court's order were conclusive evidence of what had transpired in Court and the oral evidence of the plaintiff-petitioner on the contrary could not lend credence to the assertion of the plaintiff-petitioner that the presence of its counsel had been marked in routine despite his non presence before the Court on 10.10.2012. Learned counsel for the respondent contended that no steps whatsoever were taken by the plaintiff-petitioner to move an application for rectification of the alleged wrong marking of the presence of the counsel for the petitioner in order dated 10.10.2012. In view thereof, the order dated 10.10.2012 recording the presence of the petitioner's counsel was conclusive proof of the petitioner's counsel having been present in the Court on 10.10.2012. Learned counsel contended that in the circumstances, the petitioner had failed to make out sufficient cause for not filing the appeal within the stipulated period of time. Consequently, the impugned order had been passed in consonance with the mandate of Section 5 of the Limitation Act, therefore, the impugned order was immune from challenge.

11. I have considered the submissions of learned counsel for the parties and have gone through the record referred to above. I am of the considered view that the impugned order passed by the lower Appellate

Court is in accordance with law, therefore, does not warrant any interference for the reasons as are recorded hereunder.

12. Section 5 of Limitation Act lays down that an appeal may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within the period provided. Section 2 (h) of the Act (ibid) defines good faith to mean that nothing shall be deemed to be done in good faith which is not done with due care and attention. Section 2(h) and 5 of the Limitation Act, 1963 (hereinafter referred as the Act') is reproduced hereunder:

Section 2(h) of Limitation Act

(h) “good faith”— nothing shall be deemed to be done in good faith which is not done with due care and attention;

Section 5 of Limitation Act, 1963

Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

13. The term “sufficient cause” was considered by the Hon'ble Supreme Court in ***Balwant Singh (deed) Vs. Jagdish Singh and others*** **2010 AIR (SC) 3043**, and it was held as under:

The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no

more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention.

In ***Bhim and another Vs. Harish Chander 1972 PLR 33***, this Court has held as under:

“In this suit involving a question of limitation, we shall have to adopt the definition of ‘good faith’ as given in section 2(h) of Limitation Act, 1963, rather than the definition of the expression given in Section 22 of the General Clauses Act. According to the definition given in the Limitation Act, nothing shall be deemed to be done in good faith which is not done with due care and attention.”

14. Admittedly as per the own showing of the plaintiff, the case was transferred from the Court of Ms.Pushpa Rani, CJ (Jr.Divn.) Ludhiana on 10.10.2012 to another Court and despite hectic efforts, it could not be ascertained as to which court the case had been transferred to as neither the Ahlmad of the Court of Ms.Pushpa Rani, Civil Judge (J.D.,) Ludhiana was maintaining any register nor was any official willing to give any details/particulars of the listing of the case. It belies comprehension that in

the aforementioned background, the plaintiff-petitioner took no steps to seek redress of his grievance by moving an application for a period of more than four months and chose to maintain a stoic silence till such time an application was moved before the Hon'ble Inspecting Judge. However, even moving of application before the Hon'ble Inspecting Judge is without any proof in respect thereto. Thereafter, as per the own showing of the plaintiff-petitioner, no reply was received from the office of the Hon'ble Inspecting Judge but on 5.4.2013 the petitioner learnt about the case having been dismissed vide ex parte judgment and decree dated 12.12.2012. No explanation has been given as to how in the circumstance it was learnt that on 5.4.2013 the case was found to have been dismissed vide ex parte judgment and decree dated 12.12.2012. Apart from the aforementioned aspect of the matter, there is no explanation for the presence of the petitioner's counsel having been recorded before the Court of Sh.B.K.Sharma, Civil Judge (S.D.) Ludhiana on 10.10.2012 except for the bland statement of the petitioner's counsel not having been present but his presence having been recorded in routine. No steps whatsoever were taken by the plaintiff-petitioner to move an application pointing out the aforementioned aspect of the matter and seeking orders of the court in respect thereto. In the circumstances, the presence of the counsel for the plaintiff-petitioner as recorded in order dated 10.10.2012 has to be taken as the correct factual position. Even if assuming that the presence of the counsel for the plaintiff-petitioner was marked in routine despite his not having been present, still in the background of the position as stated by the petitioner, namely of petitioner not having been able to ascertain the court to which the case had been transferred on account of non maintenance of any

register by the Ahlmad of the Court of Ms.Pushpa Rani, Civil Judge (J.D.) Ludhiana as also on account of no official disclosing any details/particulars of the listing of the case and filing of an application before the Hon'ble Inspecting Judge on 16.2.2013 i.e more than four months thereafter does not evidence the petitioner having acted with due care and attention. In the circumstance by no stretch of imagination, it can be said that the plaintiff-petitioner had established sufficient cause in being prevented from filing the appeal within the stipulated period of time. Besides there is no proof of the petitioner having submitted an application to the Hon'ble Inspecting Judge. Even by assuming that the application was submitted, there is no escape from the fact that it was submitted after more than four months from 10.10.2012. No urgency was shown despite the circumstances so warranting. In the circumstances, the impugned order rejecting the application under Section 5 of the Limitation Act, consequently dismissing the appeal does not warrant any interference nor is the decision of the Hon'ble Supreme Court relied upon by learned counsel for the petitioner of any avail in the facts and circumstances of the case i.e. in the presence of want of due care and attention and failure to establish sufficient cause. Accordingly finding no merit in the revision petition, the same is dismissed. No order as to costs.

17.11.2017
Meenu

(B.S.WALIA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No