

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

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**CM No.23978-79-CII of 2014
in/and
FAO No.8801 of 2014(O & M)
Date of Decision:07.03.2017**

B.S.Builders, Patiala

....appellant

Versus

State of Punjab and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Rakesh Gupta, Advocate
for the appellant

Mr.S.P.Garg, Advocate
for respondents No.1 to 3

ARUN PALLI, J. (ORAL):

CM No.23978-CII of 2014

This is an application for condonation of delay of 12 days in re-filing the accompanying appeal.

For the reasons set out in the application, that is duly supported by an affidavit, the same is allowed. Delay of 12 days in re-filing the appeal is condoned.

CM stands disposed of.

CM No.23979-CII of 2014

This is an application under Section 5 of the Limitation Act, seeking condonation of delay of 1254 days in filing the accompanying appeal.

Vide arbitral award dated 30.06.2006, the claim filed by the

applicant was partly granted by the Arbitrator. Being aggrieved against the said award, the applicant filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'). However, vide impugned judgement, dated 29.07.2010, learned Additional District Judge, Patiala, dismissed the said objections. And, for, the appeal was filed against the said judgement, on 02.08.2014, it suffers from a delay of over 3½ years.

All what has been set out in the application to justify the delay that had occurred in filing the appeal, is that the applicant was represented by Sh.A.S.Ghai, Advocate, before the Arbitrator, and it was he who even filed the objections against the arbitral award, on behalf of the applicant. The counsel for the applicant had also engaged another counsel to contest the case, for, he himself left the country to settle overseas. The applicant was never informed of the status of the case, and he always remained under a bona fide belief that he would be intimated the decision in the case, as and when made. But, it was only on a subsequent inquiry, it came to the knowledge of the applicant that the objections filed by him have already been dismissed. Immediately, a certified copy of the judgement dated 29.07.2010 was obtained and the present appeal was filed.

Notice in the application was issued to the respondents and reply thereto has been filed. It is maintained, inter alia, that the delay of 1254 days in filing the appeal is wholly intentional and deliberate and no cogent explanation is rendered for the inordinate delay, the appeal suffers from.

I have heard learned counsel for the parties and perused the records.

Ex facie, the application lacks bona fides. Concededly, the applicant had engaged Sh.A.S.Ghai, Advocate, who appeared for the applicant before the Arbitrator and he also filed objections under Section 34 of the Act. Nothing is indicated in the application as to when Sh.A.S.Ghai, Advocate left the country to settle abroad. Significantly, the case set out by the applicant himself is that Sh.Ghai, engaged another counsel on behalf of the applicant to contest the matter, who indeed appeared and argued the case. Presence of Sh.S.P.S.Lekh, Advocate, is recorded in the impugned judgement, for the applicant, and it is not his case, either that he never engaged the said counsel or the matter was entrusted to the said counsel without his consent. Even otherwise, it is wholly incredible that though the matter remained pending for over 04 years before the Additional District Judge, the applicant not even once ascertained the fate of the objections, he had filed under Section 34 of the Act or the status of his case. The presumption that permeates the record is that the applicant engaged Sh.S.P.S.Lekh, Advocate, for, his earlier counsel had moved abroad, and, this is how, he continued to appear in the proceedings, till the matter was decided. Not just that, the objections were dismissed as back as on 29.07.2010, and the accompanying appeal was instituted on 02.08.2014, thus, it defies logic that even in this period of nearly four years, the applicant never even once, inquired the fate of his case. Apparently, the assertions set out in application are wholly vague, indefinite and lack material particulars. Nothing is indicated, as to when did the applicant inquire or ascertain the status of his case, and from whom did he gather knowledge that the matter had already been dismissed. Rather, an analysis

of the position as sketched out above, irresistibly shows that post dismissal of the objections, the applicant on his own volition, did not wish to pursue the matter, any further, and therefore, did file any appeal. Thus, the institution of the appeal after over 3½ years is purely an after-thought, and is speculative in nature. Needless to assert, that it is always the endeavour, and rather, the earnest desire of the Court to decide the cause of every litigant, on merits, provided, he approach the Court in good faith, and does not lack bona fides. Such is not the position in the matter in hand. Thus, there is hardly any cause, least a sufficient cause, to condone the delay of about 3½ years i.e.1254 days, in filing the accompanying appeal. Therefore, the Court is choiceless but to dismiss this application.

The application is accordingly dismissed.

FAO No.8801 of 2014(O & M)

For, the application seeking condonation of delay in filing the appeal has been dismissed, the appeal, as a necessary consequence, is dismissed being barred by time.

March 07, 2017

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(ARUN PALLI)
JUDGE

Whether speaking/reasoned

Yes/No.

Whether reportable-

Yes/No