

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

115

FAO No.293 of 2017(O & M)

Date of Decision:23.01.2017

M/s B.R.Rice Mills, District Sangrur

....appellant

Versus

**The Punjab State Cooperative Supply and Marketing Federation
Limited and others**

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Ishan Gupta, Advocate
for the appellant

ARUN PALLI, J. (ORAL):

CM No.994-CII of 2017

This is an application under Section 5 of the Limitation Act, seeking condonation of delay of 875 days that has occurred in filing the accompanying appeal.

The only explanation that has been rendered to justify the delay is; that against the arbitral award dated 17.01.2011, the applicant had filed objections under Section 34 of the Arbitration and Conciliation Act, 1996, and, although, vide judgment dated 05.05.2014, the Additional District Judge, Chandigarh, dismissed his objections, but, his counsel never informed him of the said decision. And, it was only when he received a notice from the executing Court, in the month of July 2016, he acquired knowledge, as regards the judgment dated 05.05.2014. Further, the applicant has no source of income, for, his rice mill was shut down in the

year 2009. Thus, he lost some time in arranging the requisite funds to file the appeal. He applied for a certified copy of the judgement dated 05.05.2014, on 25.11.2016, which was prepared on 12.12.2016 and delivered on 13.12.2016. Thus, the appeal.

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

Ex facie, the application lacks both i.e. merits as also the bona fides, as is being demonstrated hereafter. Even if, it is assumed that the applicant was never informed by his counsel, of the decision, vide which his objections were dismissed, but, it is wholly incredible that for a period of over two years, even the applicant never contacted his counsel or his office to ascertain the fate of his objections. Particularly, when in the present day and age, accessibility, communication and information is no longer an issue. Even otherwise, it is not the case of the applicant, either, that during this period of two years, neither did he communicate with his counsel, nor visit his office to prosecute his case. The case set out by the applicant himself is that it was only in the month of July 2016, he gathered that his objections have since been dismissed. If it indeed was so, in the natural course, he would have contacted his counsel to ascertain the true position, applied for the certified copy of the decision, and explored further options. Ordinarily, he would have even expressed his grievance or made a complaint against his counsel to an appropriate forum, which he never did. Rather, the applicant is consciously quiet in this respect. Likewise, immediately on acquisition of knowledge in July 2016, as regards dismissal of his objections, he would have filed an appeal without any loss of time. Whereas, to the contrary, he chose to contest the execution proceedings, through a counsel, that were

pending at Sangrur.

The order passed by the executing Court, being extracted hereafter, reveals that as the applicant even failed to file reply to the execution petition, warrants of attachment were issued on 18.10.2016 for 14.12.2016;

**Present: Sh.Bhushan Garg, Adv.counsel for DH
Sh.AS Ashta Adv.counsel for Jds**

**No reply filed by JD. Let execution to
proceed further. List of Property be filed and Warrant of
Attachment be issued for 14.12.2016.**

-sd-

**(Shatin Goyal)
ADJ Sangrur
18.10.2016**

Thus, apparently, the case set out by the applicant, for, he had no source of income, and since it took him some time to arrange the requisite funds, therefore, the appeal could not be filed in time, loses its veracity and is discarded. Instead, it is, writ large on face of the record, that the applicant having exhausted all the options, to delay the execution proceedings as far as possible, then chose to assail the judgement dated 05.05.2014, which ex facie, is an afterthought. Records show that the appeal was filed on 11.11.2016, whereas the applicant applied for the certified copy of the judgement, being impugned in the accompanying appeal, on 25.11.2016, which was delivered on 13.12.2016. It is irreconcilable that even in the given situation, the applicant would actually apply for certified copy of the judgement, under challenge, post institution of the appeal. This rather shows that the applicant possessed the certified copy of the decision dated 05.05.2014, but since that was obtained much

earlier, and would not have been in sync with the explanation that is rendered in the application, he chose to obtain another copy. That being so, the only and the inevitable conclusion, one could reach, in the situation, is that the applicant had full knowledge of the judgement dated 05.05.2014, from its inception and did not choose to file an appeal, on his own volition. And, instead contested the execution proceedings.

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 2½ years i.e.875 days, in filing the accompanying appeal. Therefore, the Court is choiceless but to dismiss this application.

The application is accordingly dismissed.

FAO No.293 of 2017(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.

January 23, 2017
neenu

(ARUN PALLI)
JUDGE

Whether speaking/reasoned Yes/No.

Whether reportable- Yes/No