

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3122-2017 (O&M)

Date of decision: 03.07.2017

Punjab State and another

..... Appellants

Versus

M/s M.H.B. Metropolitan Construction Company

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Abhay Pal Singh, AAG, Punjab for the appellants.

RAMENDRA JAIN, J. (ORAL)

CM-7758-C-2017

By way of instant application (CM-7758-C-2017) under Section 5 of the Limitation Act read with Section 151 CPC, the applicant-appellants have sought condonation of 317 days delay in filing the accompanying appeal.

Put pithily, the impugned judgment and decree was passed on 19.04.2016 by the Additional District Judge, Gurdaspur. The applicant-appellants applied for their certified copy on 18.05.2016 and the same was delivered on 02.06.2016. Thereafter, the office of the Chief Engineer, PWD (B&R), Punjab, Chandigarh, send the case to the office of the Secretary to Government of Punjab, PWD (B&R), Punjab, Chandigarh vide letter dated

07.09.2016, for further action and consequently, the sanction was given vide letter dated 16.09.2016 to file the accompanying appeal before this Court. Thereafter, the dealing hand and other officers were deputed on election duty up to 11.03.2017 and on their return, record of the case was collected and the grounds of appeal were got prepared and vetted from the Department and produced in the office of the Advocate General, Punjab, Chandigarh vide letter dated 17.05.2017. The concerned Law Officer of the office of the Advocate General, Punjab, raised some objections which were removed. In this process, a delay of 317 days has occurred in filing the accompanying Regular Second Appeal, which according to the applicant-appellants is neither intentional nor deliberate.

Heard.

At the outset, it is pertinent to mention that by this time it is well settled that each day's delay has to be explained mathematically. Perusal of the application shows that its contents are very casual which are taken in routine. The contents itself speak about non-seriousness of the officials/officers of the applicant-appellants in filing the accompanying appeal in time or to adhere the limitation period. After passing of the impugned judgment and decree dated 19.04.2016, the application for obtaining its certified copy was filed on 18.05.2016 i.e. after one month. However, there is no explanation as to why the applicant-appellants kept on sleeping over the matter in not applying the certified copy immediately on the preceding day of the pronouncement of the impugned judgment and decree. No explanation has come forth in this regard. Thereafter, the office of the Chief Engineer, PWD (B&R), Punjab kept on sleeping over the

matter and suddenly awoke out of a great slumber after three months and vide letter dated 07.09.2016 referred the matter to the office of the Secretary, Government of Punjab, PWD (B&R), Punjab, Chandigarh, to seek opinion as to whether the case was fit for filing of appeal before this Court. Again there is no explanation as to why the office of Chief Engineer, kept the matter in abeyance for more than three months. Thereafter, even on receipt of the necessary sanction to file the appeal from the Secretary, Government of Punjab, PWD (B&R) Department vide letter dated 16.09.2016, the appeal was not filed in time, as according to the appellants, its officials/officers were sent on election duty up to 11.03.2017. However, in support of this assertion no document has been annexed with the application. It has also not been clarified that which of the official of the appellant was in-charge to look into the matter and he was also sent on deputation in the election duty, therefore, this casual plea taken by the applicant-appellants being not supported by any documentary evidence can be said to be completely false and frivolous. The matter did not rest here. Even after on 11.03.2017, on alleged return of its official from election duty, the applicant-appellants did not bother to file the appeal within the reasonable time, rather, filed the same on 02.06.2017. Again, there is no justification for not filing the appeal between 11.03.2017 and 02.06.2017. Much water has already flown. Such type of casual approach in perusing the litigation has to be curb down with strict hands. The party who is not vigilant about its right is not entitled to any leverage for his own lapse and misconduct.

In view of discussion above, the instant application having no

merit is dismissed. Even otherwise, there is no merit in this second appeal for the reasons to follow.

RSA-3122-2017 (O&M)

The backdrop of the case is that the respondent-Company being a successful bidder was allotted the work of Soil Testing Laboratory by the defendant-appellants. On completion of work within the stipulated period to the satisfaction of concerned authorities, the respondent-Company submitted its bills on 25.11.1998, for payment, but the appellants without any sufficient reason did not make the payment of the executed work. That apart, the defendant-appellants also did not return the security amount deposited plaintiff-respondent, despite its repeated requests/representations. Consequently, the respondent-Company filed Civil Writ Petition before this Court which was disposed of on 18.02.2002, with certain directions to the defendant-appellants. Even, thereafter, the appellants failed to make the payment to the respondent. Consequently, the respondent served a legal notice upon the appellants asking them to make payment of the due amount of ₹2,48,544, which included the amount of executed work to the tune of ₹1,64,362/-, amount of final bill ₹ 21,343/- and the security deposit of ₹ 62,380/- plus interest @ 24% per annum. On receipt of the said legal notice, the appellants made payment to the respondent only towards the executed work, but without interest, forcing the respondent file a civil suit for recovery before the Additional Civil Judge (Senior Division), Gurdaspur, which after due contest was decreed vide judgment and decree dated 06.12.2012, along with interest @ 12% per annum from 23.12.1999 till 25.06.2002 and further 6% per annum on the amount of

₹ 2,48,544/- from 25.06.2002 till its realization. Being dissatisfied, the appellants have filed an appeal before the Ist Appellate Court, Gurdaspur. The same was dismissed vide impugned judgment and decree dated 19.04.2016. In this Regular Second Appeal, the learned State counsel has not been able to convince this Court that how and in what manner there is any ambiguity in the impugned judgments and decrees of both the Courts below in granting the interest to the respondent, when according to the appellants themselves they could not make the payment to the respondent due to paucity of funds. However, learned counsel for the State by referring to condition No. 17 of the agreement between the parties, urged that in view of said condition the respondent was not entitled for any interest. In support of his submissions, learned State counsel has placed reliance upon **Balwant Kaur Vs. LIC of India, 2005(1) ILR Punjab and Haryana 132.**

It is pertinent to mention here that the agreement allegedly executed in between the parties has not been placed on record, so its condition No. 17 referred to above cannot be looked into. Even otherwise, if the parties had mutually agreed to not to pay the interest vide aforesaid condition No. 17, the same does not debar the respondent to claim any interest being hit by Section 28 of the Indian Contract Act, which envisages that any agreement by which any party thereto is restricted absolutely from enforcing his rights or in respect of any contract, by usual legal proceedings in the ordinary Tribunal or which limits the time within which he may, thus, enforce his right, is void to that extent. More so, the interest granted by the Courts below in considered opinion of this this is not excessive.

No question of law much less substantial has been raised except

that the lower Courts below ought not to have granted interest to the respondent. The facts and circumstances of **Balwant Kaur's case (supra)** relied upon by learned counsel for the State are quite distinguishable from the facts of the present case.

For the reasons mentioned above, the instant Regular Second Appeal being completely devoid of any merit is also dismissed.

July 03, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No