

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

RSA NO.838 of 2017 (O&M)

Date of Order: 06.09.2017

M/s India Lease Development Ltd.

..Appellant

Versus

Rajnish Behl and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arjun Kundra, Advocate, and
Mr. Sunil Magon, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

It is an unfortunate litigation which has been dragged on for years together.

Plaintiffs filed a suit for rendition of accounts on 23.12.2003. Defendants filed written statement and thereafter did not appear and hence, proceeded against ex-parte. A preliminary decree for rendition of accounts was passed by the Civil Court on 04.11.2006. The appellant first filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte decree on 12.03.2007. The proceedings remained pending before the Court for more than 5 years, which was ultimately dismissed on 15.05.2012. The appellant filed first appeal against dismissal of application under Order 9 Rule 13 CPC. The appellant did not even at that stage thought of filing an appeal against the decree on merits under Section 96 of the CPC. The appeal against dismissal of application under Order 9 Rule 13 CPC was also dismissed on 03.03.2014. The appellant still did not file any appeal against the decree passed by the Courts on merits. The appellant chose to file a revision petition in this Court. The revision was dismissed on 20.05.2016. It is, thereafter, that the appellant has filed the first appeal with an application for seeking condonation of delay

of 3510 days in filing the appeal.

Learned first appellate Court after appreciating the evidence available on the file had dismissed the application.

I have heard counsel for the appellant and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the delay is not attributable to the appellant because it had filed an application under Order 9 Rule 13 CPC, on 12.03.2007. Thereafter, proceedings remained pending either in the first Court or in the appellate Court or before this Court. He submits that the period spent by the appellant in prosecuting the aforesaid proceedings need to be excluded or in other words needs to be condoned. He has further cited judgment of the Division Bench of the Delhi High Court reported as *M/s D.V.H. Industries v. M/s Hartley Knits, 2011(176) DLT, 106*, to contend that the Division Bench of the Delhi High Court has condoned the delay in similar circumstances.

I have considered the submissions. However, I do not find any force in the same.

The appellant before this Court is not an ordinary litigant, it is a company, which is in the business of financing of automobiles. Such companies are heavily into litigation. Such companies are having numbers of legal advisors on their rolls. Preliminary decree in this case was passed on 04.11.2006. On the day the company filed an application under Order 9 Rule 13 CPC it also had an opportunity to file an appeal before the first appellate Court, however, the company did not avail that opportunity. The company allowed the litigation to remain pending for almost 9 years in the proceedings under Order 9 Rule 13 CPC either before the trial Court or before the first appellate Court or before this Court. It is, thereafter, the appeal was filed under

Section 96 of the Code of Civil Procedure. This clearly shows that the company is taking the litigation very lightly. Decree under appeal was passed by the Court 11 years back. It is only a preliminary decree.

Keeping in view the aforesaid facts I do not find any good ground to condone the delay of 3510 days in filing the appeal.

Learned counsel for the appellant has submitted that as per the law laid down by the Hon'ble Supreme Court of India in the judgment reported as *Bhanu Kumar Jain v. Archana Kumjar, (2005) 1 SCC 787*, parties are entitled to file an appeal on merits after dismissal of proceedings under Order 9 Rule 13 CPC.

There is no dispute with the aforesaid proposition of law. The party is entitled to file an appeal. However, here the question is whether such a huge delay can be condoned or not, particularly in the case of a company to which best legal advice is easily available. Learned counsel for the appellant has further referred to the judgment of Division Bench of the Delhi High Court (*supra*). I have considered the submission of learned counsel for the appellant. In that case, the Division Bench has condoned the delay of 478 days in filing the appeal.

In the present case, the delay is almost of 10 years. In these circumstances, I do not find any good ground to interfere with the order passed by the first appellate Court. The regular second appeal is ordered to be dismissed.

September 06, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No