

CR No.586 of 2018 (O&M)

Manoj Kumar
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CR No.586 of 2018 (O&M)

Chief Administrative Officer and Ors.

....Petitioners

Versus

M/s S.P Singla Construction Pvt Ltd

....Respondent

Date of Order: 07.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajiv Sharma, Advocate for the petitioners.

AMIT RAWAL, J (ORAL)

CM No.4765-CII of 2018

This is an application for preponement of the date of hearing from 16.5.2018 to any early date.

It is stated that the plaintiff-respondent is seeking execution of the judgment and decree dated 23.11.2016 passed by the trial Court and the execution proceedings in the present case are listed for hearing today and if the impugned award is executed, the petitioner would suffer irreparable loss.

For the reasons stated in the application, which is supported by an affidavit, the same is allowed and the hearing of the application is preponed to be taken up today.

CR No.586 of 2018

The petitioner-defendants are in revision petition against order

dated 25.10.2017 passed by learned Addl. District Judge whereby their application moved under Order 41 Rule 3-A read with Section 151 CPC as also under Section 5 of the limitation Act for condoning the delay of 113 days in filing the appeal against the judgment and decree dated 23.11.2016 has been dismissed.

Respondent-plaintiff instituted the suit for declaration that the letters dated 19.12.2007 and dated 12.6.2008 and 24.6.2008 are illegal, null and void with consequential relief of recovery for a sum of Rs.8,49,810/- along with interest, on the premise that the defendants issued tender notice no.242-W/Constt.II/CDG dated 25.8.2007 for construction of well foundation and RCC sub structure and other allied works in connection with Chandigarh-Ludhiana new B.G Rail Link Project. Aforesaid tender was accepted in lieu whereof a sum of Rs.8,49,810/- was deposited. Time period for completion of aforesaid work was 11 months. Thereafter, defendant no.1 issued impugned acceptance letter dated 19.12.2007 informing the petitioner that as the negotiations were held on 3.12.2007, the agreement was to be executed within 15 days. However rates of items no.NS-1 to NS-18 were unilaterally and arbitrarily fixed by the defendant authorities. Said modification was contrary to the NIT condition no.4.8 for the quantities beyond the tender quantities which clearly shows that the aforesaid impugned acceptance had factually become a counter offer. There was no scope of arriving at mutually or even scope for negotiations in view of clause 4.8 of NIT. Comparison of rates as mentioned in the impugned letter dated 19.12.2017 and the rates as quoted by the plaintiff were also given in tabulated form. Despite various requests, the defendants failed to refund the earnest money. The plaintiff was shocked upon receiving a letter

dated 16.1.2008 after 15 days from the expiry of validity on 2.1.2008 from the office of defendants calling upon the plaintiff to deposit performance guarantee. Plaintiff again vide letter dated 28.1.2008 clearly asserted to defendant no.3 that additional quantities were to be executed as per clause 4.8. Vide letter dated 6.2.2008, defendants again asked the plaintiff to submit performance guarantee amounting to Rs.24,38,650/-, however, they failed to reply the letter of plaintiff. Ultimately, the plaintiff again received a notice under clause 26 of the General Condition of the Contract, Regulations 1999 from the office of defendant No.3 without taking into account that the agreement was never executed as the impugned acceptance letter was merely a proposal and same was never accepted. It is stated that the plaintiff filed writ petition bearing CWP No.1612 of 2008 before this Court, which was withdrawn vide order dated 10.9.2008 without prejudice to any other remedy. Even the legal notice dated 29.9.2008 was sent to the defendants, but, no reply was received.

Defendants contested the suit by raising preliminary objections regarding maintainability and without jurisdiction on the premise that the contract of the plaintiff was rescinded in terms of clause 62 of General Conditions of Contract, 1999. Having failed to do so, notice was given to the plaintiff to start work but he did not start the work despite notices being sent. Reply sent was not found to be satisfactory and as such after expiry of notice period, the contract was terminated vide letter dated 12.6.2008 under intimation to the plaintiff. It was clarified that the action would be taken as per Special tender Conditions and Instructions. Plaintiff was called upon to do the work but he did not come present. Hence the defendants prayed for dismissal of the suit.

The trial Court on the basis of pleadings of the parties framed the following issues:

- “1. Whether the acceptance letters dated 19.12.2007, dated 12.6.2008 and 24.6.2008 issued by the defendants are wrong, illegal, null and void being counter offer not acceptable to the plaintiff and are liable to be set aside and the plaintiff is entitled to recover Rs.8,49,810/- from the defendants along with interest @ 24% p.a?OPP*
- 2. Whether the suit is not maintainable?OPD*
- 3. Whether the plaintiff has no cause of action to file the present suit?OPD*
- 4. Relief.”*

On the basis of evidence brought on record, the trial Court decreed the suit vide which the impugned letter of acceptance dated 17/19.12.2007 Ex.PW1/B (also Ex.R2) and letters dated 12.6.2008 and 24.6.2008 have been declared to be null and void and the plaintiff has been held entitled to recover sum of Rs.8,49,810/- from the defendants along with interest @ 6% per annum. Said judgment and decree was assailed by the defendants by filing appeal along with an application under Order 41 Rule 3-A read with Section 151 CPC as also under Section 5 of the limitation Act for condoning the delay of 113 days in filing the appeal. The same has been dismissed by the Appellate Court vide the impugned order, hence the present appeal.

Learned counsel for the petitioner submitted that the delay normally in the Departmental cases occurs and such procedural delay in the process of their making decision is a common feature. Therefore, certain amount of latitude is impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the

ultimate analysis suffers, is public interest. In support, he relies on a judgment of Hon'ble Supreme Court in **State of Haryana Vs. Chandra Mani and Others, 1996 AIR SC 1623**. He submitted that the Appellate Court ought to have condoned the delay and heard the matter on merits. The finding of the lower Appellate Court is not correct appreciation of law and therefore deserves to be set aside.

After hearing learned counsel for the petitioner and appraising the paper book, I am of the view that there is no force in the contentions raised by learned counsel for the petitioner.

Before proceeding further, it is apt to reproduce the head note as also grounds of filing application seeking condonation of delay in filing the appeal, which reads as under:

“APPLICATION UNDER ORDER 41 RULE 3-A READ WITH SECTION 151 CPC READ WITH SECTION 5 OF LIMITATION ACT FOR CONDONATION OF DELAY OF 113 DAYS IN FILING THE ACCOMPANYING APPEAL.

RESPECTFULLY SHOWETH:

- 1. That I, Ravi Kumar Gupta S/o Sh. B.K. Gupta working as Deputy Chief Engineer/Const-II, Northern Railway, Chandigarh am well conversant with the facts of the case and has been authorized to file the present application petition on behalf of the Appellants.*
- 2. That on 23.11.2016, Ld. Lower Court was pleased to allow the suit in terms of its operative part of the order/decreed.*
- 3. That the certified copy of the order dt 23.11.2016 was received on 09.12.2016. The matter examined by various authorities which decided to file the present appeal. Thus there is a delay of 113 days in filing the present appeal is minimal.*

*4. That the delay in filing the present appeal on the part of appellants is inadvertently and bonafide. The same may be condoned keeping view that appellants are a State and the law laid down by the Hon'ble Supreme Court for condonation of delay in such cases in the case of **State of Haryana vs. Chandra Mani & Others; AIR 1996 SC 1623.***

PRAYER

It is, therefore, respectfully prayed that the present application may kindly be allowed and the delay of ____ days in filing the present appeal may kindly be condoned in the interest of justice.”

From the perusal of contents of the application, case of the petitioner did not fall within the parameters of judgment cited hereinabove in terms of judgment referred to by learned Appellate Court reported as **Esha Bhattacharjee Vs. S. Raghunathpur Nafar Academy 2013 (12) SCC 649** wherein it has been held that the State or a public body or an entity representing a collective cause should be given some acceptable latitude but an application of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bed-rock that adjudication of a lis on merits is seminal to justice dispensation system. This view has also been reiterated by Hon'ble Supreme Court in **Essar Oil Ltd Vs. Hindustan Shipyard Ltd AIR 2015 SCC 3116.**

In my view, the Department had been most callous and lackadaisical in approaching the Court as the date for submission of the application for obtaining certified copy is 09.12.2016 by which time, a period of 15 days had already expired but no explanation has come forth when the certified copy was prepared and taken. Thus the application was

bereft of merit and has been rightly dismissed by the lower Appellate Court.

I do not find any illegality or perversity in the impugned judgment. No ground is made out to interfere with the same.

Dismissed.

March 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No