

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

**RSA-33-2016 (O&M)
Date of Decision:31.08.2018**

Pritam Singh

... Appellant

Versus

United Engineering Works & another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Divyadeep Walia, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

CM-79-C-2016:

Instant application has been filed under Section 151 CPC seeking condonation of 370 days delay that has occurred in re-filing the accompanying appeal.

2. For the reasons stated in the application, the delay of 370 days in re-filing the accompanying appeal is condoned.

3. Application is disposed of.

Main case:

Plaintiff-Pritam Singh having remained unsuccessful in both the Courts below has filed the instant appeal before this Court.

2. Briefly, it may be noticed that a suit for recovery of Rs.50,996/- filed by the plaintiff against the defendants was dismissed by the trial Court vide judgement dated 07.09.2013. A civil appeal having been preferred has met the same fate in terms of order dated 15.04.2014 passed by the learned District Judge, Bathinda.

3. Facts of the case are that the plaintiff/appellant instituted a suit

of recovery on the strength of averments that he owns a 'hydra crane' and the same had been hired by the defendants for commercial purposes on rent of Rs.40,000/- per month and working hours being 10 hours per day. Expenses of the diesel and other depreciation charges were to be borne by the defendants. It was asserted by the plaintiff/appellant that if the crane was to operate more than 10 hours per day then overtime expenses were also to be paid by the defendants. Precise case set up by the plaintiff was that the crane was used by the defendants for the period 28.01.2011 to 31.07.2011 and during such period, the crane had worked overtime as well and as such, the total dues payable were Rs.2,64,341/- i.e. Rs.2,41,538/- being rent and Rs.22,803/- being the overtime expenses. Plaintiff further asserted in the plaint that the defendants had paid a sum of Rs.2,20,000/- in all against the total liability of Rs.2,64,341/- and accordingly a sum of Rs.44,341/- was outstanding. The suit for recovery was filed for a sum of Rs.50,996/- i.e. Rs.44,341/- towards outstanding rent/overtime expenses and the balance was the interest that had accrued thereupon.

4. Suffice it to notice that the defendants did not put in appearance and were accordingly proceeded ex-parte before the trial Court vide order dated 25.03.2013.

5. Counsel for the appellant has been heard at length.

6. Perusal of the impugned judgments would reveal that the plaintiff/appellant has been non-suited on the basis that apart from having adduced by way of evidence Ex.P1 i.e. registration certificate of the crane and Ex.P2 i.e. legal notice, no other credible and cogent evidence had been led to support the outstanding claim on the strength of which the suit for recovery had been instituted. The uncontroverted position is that no

agreement that was entered into between the parties had been adduced on record. Furthermore, no proof had been adduced to reflect the receipt of Rs.2,20,000/- at the hands of the defendants towards rent of the 'hydra crane'.

7. In the considered view of this Court, the judgments passed by the Courts below are well reasoned. Even if the defendants had been proceeded ex-parte, it was the plaintiff/appellant, who had instituted the suit and had to stand on his own legs by adducing evidence to conclusively prove a contract having been entered into between the parties for use of the crane. No such evidence having been led, the Courts below have rightfully dismissed the suit of recovery.

8. The instant second appeal does not raise any question of law.

9. No interference in the matter is warranted.

10. Appeal is dismissed.

31.08.2018*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No