

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

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**CM-7409-11-C-2018 in/and
RSA-2888-2018 (O&M)
Date of Decision : 17.07.2018**

M/s Mahavir Rice and General Mills and others Appellants

Versus

Shree Durga Trading Company Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Rakesh Gupta, Advocate
for the appellants.

Mr. Tajinder Pal Singh Makkar, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

CM Nos.7409-11-C-2018

For the reasons recorded, the applications are allowed.

Deficiency in court fee is made good. Delay of 64 days in re-filing and
delay of 101 days in filing the appeal is condoned.

RSA-2888-2018 (O&M)

On 17.05.2018 the following order was passed:-

“Counsel for the appellants has argued that the courts below have decided the case on the fallacious premise that no evidence was led by the appellants but actually the appellants had proved their own account books which had not been adverted to at all.

Notice of motion in the application for condonation of delay as well as in the main appeal for 3.7.2018. Dasti only through counsel in the trial court.”

Today the counsel appearing on behalf of the respondent has argued that the statement made on the last date is not entirely correct because at one place the appellate court had noticed that the appellants had produced two separate versions of account books. However, he is not in a position to deny that on the very next page the appellate court had remarked that the appellants had not led any evidence. It is further his contention that actually the documents placed on record by the appellant do not advance his case in any manner.

Counsel for the appellants on the other hand has argued that once the counsel for the respondent is not in a position to deny that both the courts had not considered the evidence led by the appellants the matter cannot be side stepped in this manner. He has further stated that to allay all the apprehensions of the respondent the appellants will ensure that the remaining decretal amount with upto date interest is deposited with the Executing Court (as part of the decretal amount has already been deposited). The Executing Court should put the entire decretal amount in a fixed deposit and then the matter be decided again. He has further stated that he would not insist that both the judgments be set aside but he would be satisfied if the judgment of the appellate court is set aside and it be directed to re-decide the matter after considering the evidence of the appellants.

Counsel for the respondent has not been able to deny the reasonableness of this request.

In the circumstances, the judgment of the appellate court is set aside and the matter is remanded back to the appellate court to

re-decide the case in accordance with law. However, this would be subject to the appellant depositing the remaining decretal amount before the Executing Court before the next date which is fixed as 07.09.2018 before the appellate court. The Executing Court shall put the entire decretal amount in a fixed deposit in any nationalized bank. Parties through counsel are directed to appear before the appellate court on 07.09.2018. The record be sent back to the appellate court. The appellate court shall endeavour to decide the matter on or before 21.12.2018. The deposited amount would enure to the benefit of the party who is successful.

Appeal stands allowed in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

July 17, 2018
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**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No