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

**RSA No.6017 of 2017 (O&M)
Date of Decision: 16.07.2018**

**PUNJAB STATE WARE HOUSING CORPORATION MOGA
.....Appellant**

Vs

**M/S ROMESH RICE MILLS MOGA
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Nitin Kaushal, Advocate
for the appellant.

RAJ MOHAN SINGH, J. (Oral)

[1]. Plaintiff is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for recovery.

[2]. Brief facts are that an agreement dated 07.12.1995 was executed between the plaintiff and defendant for custom milling of paddy. Defendant was required to deliver the rice within stipulated time. 36290 bags equal to 23588.50 quintals of paddy were entrusted to the defendant and defendant was required to deliver the rice upto 28.02.1996. The time was further extended to 30.06.1996.

[3]. It was alleged by the plaintiff that only 15278 bags of

paddy had to be shifted due to non-milling. Out of remaining only 16569 bags were milled and rice was supplied to the plaintiff. In this way, 4443 bags were not milled by the defendant. An amount of Rs.17,09,818/- was claimed by the plaintiff upto 30.06.1997 along with cost and future interest.

[4]. As per arbitration clause No.20, the matter was referred to the sole Arbitrator. The Arbitrator passed an award dated 29.07.2003 in favour of the plaintiff, thereby fixing liability of Rs.17,09,818/- on the defendant with future interest @ 12% per annum from 01.07.1997 till final realization of the amount.

[5]. The aforesaid award was challenged before the Addl. District Judge, Chandigarh on 02.04.2009. The award was set aside by the Court and liberty was given to the Managing Director of the Corporation to decide the controversy as per recital in the agreement.

[6]. The Managing Director ultimately decided the *lis* vide order dated 14.07.2009 and an amount of Rs.18,21,696/- was ordered to be recovered from the defendant along with interest @ 12% per annum from 15.07.2009 till final realization of the amount.

[7]. Since the defendant failed to pay the amount that led to filing of civil suit in question. During course of proceedings,

defendant was proceeded against *ex parte*. Thereafter *ex parte* evidence was led by the plaintiff. Plaintiff could not prove any agreement executed between the parties. No document was proved in accordance with law in order to prove that an amount of Rs.21,33,813/- was due against the defendant. The plaintiff/Corporation treated the present suit as a continuation of decision of the Managing Director. The documents were only marked.

[8]. Both the Courts below have observed that the civil Court cannot sit over the decision of the Managing Director either as an Appellate Court or the executing Court. The plaintiff/Corporation was expected to lead substantive evidence on record. PW-1 Akshar Kumar was only a witness to prove authorization of the Manager to file the civil suit. PW-2 Sandeep Singh made reference to the sequence of arbitral proceedings and orders passed by the Court. The documents could not be proved with reference to proving the execution by summoning the record from the concerned quarter. Feeble attempt made by the plaintiff/Corporation in moving the application under Order 41 Rule 27 CPC for leading additional evidence was dismissed by the Court and there was no further challenge to the order passed by the trial Court, nor the said order has been assailed in the grounds of appeal of this appeal.

[9]. In view of aforesaid position, no indulgence can be granted in this appeal which is also barred by delay of 170 days in filing the appeal. No law point worth consideration is involved in the present appeal. This appeal is found to be totally devoid of merits and the same is accordingly dismissed.

[10]. Since the appeal has been dismissed on merits, therefore, there is no necessity of passing any order in the application for condonation of delay.

July 16, 2018	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No