

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

**CR No.4581 of 2015 (O&M)
Date of Decision : 01.03.2019**

State of Haryana and others

....Petitioners

VERSUS

M/s Mann Construction Company

...Respondent

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. R.K. Singla, AAG, Haryana, for the petitioners.

Mr. Munish Mittal, Advocate and Mr. Nitin Kamboj, Advocate
for the respondent.

B.S. WALIA, JUDGE (ORAL)

1. Challenge is to order Annexure P-2 dated 16.5.2015 whereby the application for condonation of delay of 76 days was dismissed by the learned District Judge, Kaithal.

2. Brief facts of the case leading to the filing of the revision petition are that the respondent filed a civil suit seeking recovery of ₹1,48,000/- along with interest @ 15% per month w.e.f 14.06.2011 till realization on the ground that the Superintending Engineer, Kaithal Circle, PWD B&R Branch Ambala Road, Opposite RKSD College Kaithal, Distt. Kaithal-petitioner No.2 had invited tenders for construction of road from village Bhanpura to Dundereri Mor, Distt Kaithal for which approximate cost of construction was

9.90 lacs in the year 2011. The respondent-plaintiff participated in the tender by depositing earnest money of ₹1,48,000/- in the shape of term deposit on 14.6.2011 of OBC, Sector 12-Karnal with petitioner-defendant No.2 whereupon petitioner-defendant No.2 issued a letter of acceptance vide Memo No.1673 dated 15.2.2012 with four months time limit for completion of work. Thereafter petitioner-defendant No.2 vide memo No.4416 dated 02.09.2012 directed the respondent-plaintiff to deposit performance security of ₹3,70,000/-.

3. The respondent-plaintiff's stand before the trial court was that petitioner-defendant No.2 was very well conversant with the orders of Hon'ble the Supreme Court restraining the functioning of quarries in Haryana as Haryana Government was a party in the said case before Hon'ble the Supreme Court. The respondent-plaintiff had been requesting petitioner-defendant No.2 for indicating the source of supply which was essentially required as quarries in Haryana were shutdown and the material from adjacent states was also stopped en-block and entry of loaded trucks of construction material was prohibited. The petitioner defendant No. 2 did not bother to indicate the source for bringing the material which was essentially required on the part of defendant No. 2 in terms of the contract agreement.

4. The learned trial Court took into account that the respondent-plaintiff had failed to deposit the performance security amounting to ₹3,70,000/- whereas as per clause 34.1 and 34.3 the successful bidder was to deposit 5% of the contract price as performance security and in case of failure, there was a clause to forfeit the earnest money and that on failure of respondent-plaintiff to deposit the performance security, petitioner-defendant No.3 forfeited the earnest money of respondent-plaintiff amounting to

₹1,48,000/- as per clause 34.3 of ITB. However, on the basis of another case between the same parties i.e. M/s Mann Construction Company vs. State of Haryana on the same set of allegations in which earnest money of ₹1,82,000/- was refunded by the petitioner-defendants at the initial stage of the suit i.e. before filing of the written statement, the learned trial court decreed the suit of the respondent-plaintiff partly with costs and held the respondent-plaintiff entitled to recover ₹1,48,000/- from the petitioner-defendants vide judgment and decree dated 20.12.2014.

5. Limitation for filing appeal against judgment and decree dated 20.12.2014 was upto 20.1.2015. The petitioner-defendants filed an appeal along with an application supported with affidavit of Shri K.K. Nain, Executive Engineer, Provincial Division No.1, PWD B&R Kaithal praying for condonation of delay of 76 days on the ground that certified copy of the judgment and decree had been applied for on 24.12.2014 and the same was supplied on 02.01.2015 where after the District Attorney sent his comments along with certified copy of the judgment and decree to the Law Secretary-cum-Legal Remembrance to Govt. Haryana, Law and Legislative Department Chandigarh on 05.02.2015, who vide endorsement No.13399/Ex-228/14 Kaithal dated 05.03.2015 issued instructions to the District Attorney, Kaithal to file an appeal. Said instructions were received in the office of the petitioners on 25.03.2015. In the light of the position as noted above it was contended that delay in filing the appeal was not intentional but due to correspondence between different departments, consequentially, the impugned order was liable to be set aside and delay of 76 days in late filing of the appeal condoned.

6. Learned counsel for the respondent on the other hand opposed the prayer on the ground that a false story had been concocted by the petitioners as perusal of the certified copy of the judgment and decree attached along with the appeal revealed that the same was applied for on 23.01.2015 i.e. after the expiry of period of limitation i.e. 20.01.2015. Certified copy was supplied on 28.01.2015 where after certified copy of the judgment and decree was sent by the District Attorney to the Law Secretary-cum-Legal Remembrancer to Govt. of Haryana Law and Legislative Department on 05.02.2015 while instructions of LR Department dated 05.03.2015 were received by the District Attorney on 25.03.2015 while the appeal was filed on 06.04.2015.

7. I have considered the submissions of learned counsel for the parties. No doubt each day's delay is not required to be explained. It is in the totality of the facts and circumstances of the case and the cause shown by the applicant that decision is to be taken as to whether sufficient cause is made out for condonation of delay or not. In the instant case, the judgment and decree is dated 20.12.2014. However, the petitioners failed to take steps to apply for the certified copy and waited for limitation to expire. It was only thereafter, on 23.1.2015 that certified copy of the judgment and decree of the learned trial Court was applied for. Apart from the fact that the petitioners did not act in good faith nor exercised due diligence by applying for certified copy of the judgment and decree dated 20.12.2014 within the period of limitation, the petitioner-defendants also acted negligently in not pursuing the matter with the authorities to get forthwith approval to file the appeal in view of delay already having taken place and let the matter be processed in routine.

Further still, despite receipt of instructions from the LR office on 25.03.2015

to file the appeal, the appeal was not filed immediately but was filed after further delay on 06.04.2015. Thus, apart from taking up the plea that time taken up was due to correspondence between different offices, there is no explanation for not having applied for certified copy of the judgment within period of limitation or for that matter for delay after receipt of instructions from the LR Department on 25.03.2015 by the District Attorney, Kaithal to file the appeal which was filed on 06.04.2015.

8. In the facts and circumstances of the case, I am satisfied that no sufficient cause whatsoever has been set out by the petitioner-defendants for setting aside of the impugned order and for condonation of delay.

9. Resultantly, finding no merit in the revision petition, the same is dismissed. No order as to costs.

March 01, 2019
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No