

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

C.R. No.4246 of 2017 (O&M)
Date of Decision.10.05.2019

M/s Bharakam Polypacks (P) Ltd.

...Petitioner

Vs

M/s Upper Ganges Sugar and Inds. Ltd.

..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order whereby the application of the defendants under sub-rule 3 of Order 37 CPC for condoning delay in filing application for leave to defend in suit filed for recovery of ₹10,49,157/- under the provisions of Order 37 CPC has been allowed.

Mr. Harkesh Manuja, learned counsel appearing on behalf of the petitioner submitted that in suit aforementioned as per the zimni orders culled out in the ground of revision, power of attorney on behalf of defendant was filed on 30.03.2016. As per the provisions of law, on receipt of summons of suit under Order 37 CPC, the defendants are required to put in appearance within 10 days on its receipt and thereafter, they have to file written statement. However, the order dated 30.03.2016 revealed that they had filed vakalatnama but did not appear before the period of 10 days had lapsed and application for leave to defend along with

condonation application is dated 6.9.2016. During all this period, they were aware of the proceedings but did not avail remedy in accordance with law, therefore, the Court ought to have passed decree in the absence of any defence.

Per contra, Mr. Parminder Singh, learned counsel appearing on behalf of the respondent submitted that the petitioner is already facing numerous complaints under Section 138 of the Negotiable Instruments Act for dishonour of cheques and declared proclaimed offender in many other cases, as for obtaining enhancement of capacity of the sugar mill had obtained certain amount, which is subject matter of suit. In fact, defendant has been duped. The counsel had been out of station and could not file the application for leave to defend, therefore, delay has occurred, which was neither intentional nor willful, thus, urges this Court for upholding the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit. It would be apt to reproduce zimni orders extracted in the revision petition and the same read as under:-

“Present: Shri JPS Rathee, counsel for the plaintiff.

Shri JB Sharma, counsel for the defendant.

Power of attorney on behalf of defendant filed.

To come up on 05.05.2016 for filing written statement.

*Sd/-
(Aarti Singh)
ACJ(SD), Panipat
30.03.2016*

Present: Shri JPS Rathee, counsel for the plaintiff.

Shri JB Sharma, counsel for the defendant.

Written statement on behalf of the defendant not filed. On request of learned counsel for the defendant, case is adjourned to 25.05.2016 for filing written statement, subject to last opportunity.

*Sd/-
(Harshali Chowdhary)
ACJ(SD), Panipat
05.05.2016*

Present: None.

File taken up today as the undersigned is availing the joining time from 21.05.2016 to 27.05.2016. Hence, case is adjourned to 13.07.2016 for the purpose already fixed. All concerned be informed accordingly.

*Sd/-
(Harshali Chowdhary)
ACJ(SD)/CJM, Panipat
19.05.2016*

Present: None.

File taken up today as the undersigned is availing the training screening course on Cyber Laws, Cyber Crimes and Electronic Evidence from 14.07.2016 to 16.07.2016 in National Police Academy, Hyderabad. The undersigned is availing journey time on 13.07.2016. Hence, case is adjourned to 6.9.2016 for the purpose already fixed. All concerned be informed accordingly.

*Sd/-
(Harshali Chowdhary)*

ACJ(SD)/CJM, Panipat
12.07.2016

Present: Shri JPS Rathee, counsel for the plaintiff.

Shri JB Sharma, counsel for the defendant.

An application for leave to defend filed. An application for condonation of delay in filing the application for leave to defend on behalf of the defendant filed. Copy supplied. Now, case is adjourned to 23.09.2016 for filing reply on the above said application.

*Sd/-
(Harshali Chowdhary)
ACJ(SD)/CJM, Panipat
06.09.2016.”*

The order dated 30.03.2016 of the trial Court reveals that defendant was given time to file written statement on 5.5.2016 whereas provisions of Order 37 is complete code and Court cannot deviate from that but it appears that in routine, defendant was called upon to file the written statement. Even the other orders also reveal that defendant was given two chances to file the written statement. The court's act prejudice none. Equally so, it cannot be said that defendant was diligent. Once the summons accompanying the suit as well as copy of suit revealed heading to be suit under Order 37 CPC, the legal luminaries handling the case are required to follow the procedure. However, the Legislature in their wisdom had not taken away power of the Court to condone delay, if justified, as per provisions of Order 37(3) CPC. Filing of the application on 06.09.2016 is not sustainable. It is a case where benefit of

lackadaisical approach cannot be given to the defendant and the matter requires imposition of costs.

In view of such circumstances, while upholding the order under challenge, costs of ₹10,000/- is imposed upon the defendant to be paid to the plaintiff. The revision petition is disposed of in above terms.

AMIT RAWAL)
JUDGE

May 10, 2019
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No