

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

Sr. No.244

CR No.8346 of 2015

Date of decision: 07.11.2019

M/s Indian Oil Corporation Limited

....Petitioner

versus

Darbara Singh Dhillon and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ashish Kapoor, Advocate
for the petitioner.

Mr. Sandeep K. Sharma, Advocate
for respondents No.2 and 3.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 07.09.2015 passed by the Additional District Judge, Jalandhar (for short – the Executing Court) through which an application filed by the petitioner seeking restoration of an application filed by them under Section 151 CPC read with Order 47 CPC has been dismissed on the ground of delay.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in the year 1989 land was acquired for the petitioner-M/s Indian Oil Corporation Limited (for short – the Corporation). The acquired land included the respondents' land. The Collector gave an award with regard to compensation to be paid to the respondents for their acquired land. The respondents filed a reference under

Section 18 of the Land Acquisition Act 1894, in which they were held

entitled to compensation amounting to Rs.10,18,104.84/-. The said amount, alongwith compensation payable to other land owners, was deposited by the petitioner before the Executing Court. It is the case of the petitioner that though the respondents were entitled to withdraw Rs.10,18,104.84/- they withdrew Rs.12,48,929/-. Accordingly, an application was filed by the petitioner before the Executing Court seeking refund of such amount. The Executing Court held a preliminary enquiry and found prima facie truth in the petitioner's case and accordingly asked the respondents to file an affidavit in that regard. The respondents denied that they had withdrawn any excess amount. For non-appearance of the petitioner's counsel as also for non-compliance of the earlier orders passed by the Executing Court, the petitioner's application was dismissed by the Executing Court for non-prosecution. Such order of the Executing Court was challenged by the petitioner before this Court through C.R. No.3667 of 2012 – M/s Indian Oil Corporation Limited versus Darbara Singh Dhillon and others, which petition was withdrawn by the petitioner on 02.08.2013. However, liberty was granted to the petitioner to move the Executing Court for restoration of its application which had been dismissed for non-prosecution. Accordingly, on 28.09.2013, an application was preferred by the petitioner seeking restoration of its application which had been dismissed for non-prosecution. Such application has been dismissed by the Executing Court on the ground of delay. Such order of the Executing Court has been impugned in the present proceedings.

Learned counsel for the parties have been heard.

Petitioner's application seeking therein refund of excess compensation withdrawn by the respondents was dismissed for non-

prosecution against which the petitioner had filed revision petition before this Court which on 02.08.2013 was permitted to be withdrawn with liberty to the petitioner to approach the Executing Court seeking restoration of his application. As per the liberty granted by this Court, on 28.09.2013, the petitioner filed an application before the Executing Court seeking restoration of his application. The Executing Court has dismissed the application of the petitioner as it found the same to be delayed by 59 days.

The record reveals that the petitioner had never slept over the matter. At an earlier point of time, through a revision petition preferred before this Court, the petitioner had challenged the dismissal of its application by the Executing Court for non-prosecution. Thereafter, on 02.08.2013, the revision petition was permitted to be withdrawn by this Court with liberty to the petitioner to approach the Executing Court seeking restoration of its application. As per liberty granted by this Court, on 28.09.2013 the petitioner filed an application seeking restoration of its application dismissed for non-prosecution.

In the light of the above, the procedural delay of 59 days at the behest of the petitioner – a Statutory Corporation, in the filing of its restoration application is found to be bonafide and liable to be condoned especially when through its application, the restoration of which is sought, the petitioner seeks refund of excess compensation withdrawn by the respondents and that such fact was prima facie borne out in a preliminary enquiry conducted by the Executing Court on the administrative side.

Resultantly, the impugned order is set aside and the Executing Court is directed to decide the petitioner's application through which it seeks refund of excess compensation paid to the respondents on its merits.

The present petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

November 07, 2019
Jyoti 1

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