

**C.M. NOS.6734-35 C OF 2017 &
R.S.A. NO.2720 OF 2017**

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

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**C.M. NOS.6734-35 C OF 2017 &
R.S.A. NO.2720 OF 2017
DATE OF DECISION: MARCH 18, 2019**

Punjab State Warehousing Corporation, Moga

.....Appellant

VERSUS

Sukhjot Singh Walia

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. S. S. Bedi, Advocate,
for the appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

C.M. No.6734 C of 2017

Prayer in this application is for condonation of delay of 23 days
in refiling the appeal.

In the said application, it has been mentioned that the appeal
was filed with deficiency in Court fee because of non-availability of cash
due to demonetization, especially the cash. In that process, for getting the
requisite amount for the purpose of making good the deficiency in court fee,
delay of 23 days in refiling the appeal has occurred, which is neither
intentional nor deliberate. The application is supported by an affidavit.

In view of the above, the present application is allowed and
delay of 23 days in refiling the appeal stands condoned.

C.M. No.6735 C of 2017

Prayer in this application is for making good the deficiency in the Court fee.

The reason for deficiency in the court fee, as mentioned in the application, was because of demonitization, counsel for the appellant could not withdraw the amount and purchase the stamp papers, resulting in deficiency in court fee. Now the said deficiency has been made good by filing the requisite court fee. The application is supported by an affidavit of the counsel for the applicant-appellant.

Since the deficiency in the court fee has already been made good, the present application stands allowed.

R.S.A. No.2720 of 2017

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Moga, dated 15.07.2014, whereby civil suit preferred by the appellant-plaintiff (Punjab State Ware Housing Corporation) for recovery of ₹2,05,465/- on account of loss caused to the appellant-Corporation due to the negligence on the part of respondent-defendant Sukhjit Singh Walia, Ex.Godown Assistant, while he was posted as State Ware House Manager, Badhni Kalan vide order dated 29.03.2005 passed by the Managing Director of the appellant-plaintiff, has been dismissed on the ground of delay as also on merits, appeal against which preferred by the appellant-plaintiff has been dismissed by the Additional District Judge, Moga, vide judgment dated 01.09.2016.

It is the contention of learned counsel for the appellant that the learned trial Court has failed to appreciate that the suit for recovery was instituted on 22.09.2007 and the cause of action arose against the

respondent-plaintiff to the appellant-Corporation after the passing of the order dated 29.03.2005. The suit was well within the limitation and, therefore, the judgment and decree dated 15.07.2014 passed by the trial Court deserves to be set-aside on this score. His further contention is that since in the disciplinary proceedings, which were held against the respondent-defendant by the department no fault has been found, the order of punishment should have been accepted and the court below should have proceeded to decree the suit.

So far as the Appellate Court is concerned, it has been submitted that the said Court has taken into consideration the merit of the case and no finding was given with regard to the factum of there being delay in filing the civil suit, which was one of the grounds for rejecting the claim of the appellant-plaintiff by the trial. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set-aside.

I have considered the submissions made by learned counsel for the petitioner and with his assistance have gone through the records available as also the judgments passed by the Courts below.

Even if the aspect of delay, as has been so done by the lower Appellate Court, is ignored, the question would still remain as to whether merely on the basis of the departmental proceedings held against an employee, suit for recovery, which has been instituted by the appellant-Corporation, deserves to be decreed. The answer to the same would be in negative as in a civil suit, where the claim for recovery has been put forth, it is the bounden duty and responsibility of the appellant-plaintiff to prove its case to the hilt that in fact there was negligence or fault committed by the

respondent-defendant. No evidence has been produced before the Courts below, which would substantiate this aspect as it is merely because of the enquiry proceedings, which were held against the respondent-defendant that the appellant-Corporation is pushing its claim of recovery. The onus, being upon the appellant-plaintiff to prove that there was in fact negligence on the part of the respondent-defendant in performing his official duties or there was a fault in doing so, the onus having not been discharged by the appellant-plaintiff, the suit could not have been decreed and rightly so, the Courts below have proceeded to reject the claim of the appellant-plaintiff.

There can be no doubt that the Civil Court has to come to an independent conclusion with regard to the factum as to whether there has been any fault committed by an employee from whom the recovery is sought to be made. The said aspect having not been taken care of by the appellant-plaintiff by proving by way of evidence with regard to the negligence or fault having been committed by the respondent-defendant, the Court has no option but to dismiss the suit. The departmental proceedings may be good as far as taking action against an employee is concerned but for proving the factum of recovery to be effected from an employee in a civil court on the basis of the said departmental proceedings, not only has it got to be proved that the order was passed in accordance with the statutory rules governing the service but also to substantiate and prove the loss caused to the employer by the proved misconduct to the employee. This has to be established and proved on the basis of independent evidence.

As is apparent from the pleadings and the evidence, which have been duly considered by the Courts below that there was no independent evidence produced on record to substantiate that aspect nor could the

counsel for the appellant dispute the said aspect, the judgments and decree as passed by the Courts below cannot be faulted with.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

March 18, 2019
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No