

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111)

CR no.8318 of 2019

Date of Decision: 13.01.2020

Gurcharan Singh

...Appellant

Versus

Sokhal Minerals Pvt. Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. B.S. Mittal, Advocate, for the appellant.

Amol Rattan Singh, J. (Oral)

By this petition, the petitioner challenges the orders of the learned trial court (Additional Civil Judge (Sr. Divn.), Sirsa), dated 17.09.2019, by which leave to defend the suit instituted by the present petitioner against the respondents herein (defendants in the suit) has been granted to the defendants, the suit being one filed under the provisions of Section 37 of the Code of Civil Procedure, 1908.

Learned counsel for the petitioner points to the amendment made in Rule 3 of Order 37 of the CPC, as applicable to the States of Punjab, Haryana and Himachal Pradesh, as also to the Union Territory/ NCT, Chandigarh and Delhi, with the said Rule reading as follows:-

“(1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally, or subject to such terms as to payment into Court, giving security, framing

and recording issues or otherwise, as the Court thinks fit.

(3) The provisions of Section 5 of the Indian Limitation Act, 1908, shall apply to applications under sub-rule (1). (High Court Noti. no.577-G., dt. 15-11-1978).”

He therefore submits that with the provisions of Section 5 of the Indian Limitation Act, 1963, to be applicable to any application filed by the defendant seeking leave to defend the suit, the respondents- defendants were required to file an application under Section 5, if they sought leave to defend the suit, once such application, seeking leave, had been filed beyond the period given in the notice issued.

He points to the said notice issued by the learned trial court, dated 23.04.2019 (copy Annexure P-2), the relevant part of which reads as follows:-

“Whereas Gurcharan Singh has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for ₹222000 and interest, you are hereby summoned to cause and appearance to be entered for you, within ten days from the service thereof, in default whereof the plaintiff will be entitled, after the expiration of the said period of ten days, to obtain a decree for any sum not exceeding the sum of ₹222000 and the sum of ₹ for costs, together with such interest, if any, as the Court may order.

xxx xxx xxx”

He thus submits that only 10 days having been granted to the defendants to even seek leave to defend the suit, with such period of 10 days to be computed from the date of service upon them (of the notice issued), and the application filed by them seeking leave to defend being one dated July 17, 2019 (copy Annexure P-3), it was obviously well beyond the 10 days time granted and therefore, without an application under Section 5

having been filed, the learned trial court has wholly erred in condoning the delay and granting them leave to defend the suit.

When this case had initially come up for hearing on January 10, 2020, learned counsel had sought time to cite a judgment to support his contention that a separate application under Section 5 of the Limitation Act was required to be filed (even though the respondent-defendants, in their application seeking leave to defend the suit, had given reasons for the delay).

Today, he relies upon a judgment of a coordinate Bench of the Delhi High Court in **Ravinder pal Singh Bawa v. Meenakshi Marwah**, (2012) 14 RCR (Civil) 844, wherein it was observed as follows:-

“11. In the absence of an application for condonation of delay for explaining the delay for in filing the leave to defend application, this court has no option but to dismiss the present application as having been filed beyond the period prescribed in the statute.”

Having considered the matter, it is seen that in the said case before the Delhi High Court, in paragraph 10 it is stated as follows:-

“Further, the submission made by learned counsel for the defendant that an opportunity be given to him, to file an application for condonation of delay cannot be acceded to at this stage for the simple reason that the defendant was well aware of the objection taken by the other side as long back as about two years ago and yet no steps were taken by her to file an application for condonation of delay.”

Thus, seemingly, there was no reasoning given in the application of the defendants seeking leave to defend that suit.

In the present case, it is seen that in the application filed by the

respondent-defendants, it has been stated in paragraphs 3 and 4 thereof, that the summons issued by the trial court on 23.04.2019 were not served personally upon them but effected through their peon, on a date that they were “busy in conducting the proceedings of the Civil Writ Petition no.30641 of 2018 titled as “M/s R.S. Joint Venture v. State of Haryana and others, pending in the Hon'ble High Court at Chandigarh”.

It has further been stated that the uncle of the defendants had expired (seemingly the uncle of the Directors of the Company), with it next stated that the peon through whom service had been effected, on 24.04.2019 itself (by *dasti* process as submitted to this court), had disclosed that fact to the defendants only on 10.07.2019, and that thereafter the application had been filed within 10 days of such knowledge.

Learned counsel for the petitioner however points to Annexure P-2 again, to submit that in fact it was one Puneet who is shown to have been served of the notice issued (with such service having been effected on 24.04.2019), the said Puneet stated to be (in the report on the service), the manager of the company.

Thus, if the reporting is to be accepted to be correct, it was not a peon but a manager of the company who was served of the notice issued by the trial court and hence, it would be difficult to accept that the Manager did not inform the Director of the company, i.e. respondent-defendant no.3, Aman Sokhal, of the factum of the notice having been received.

He submits that whether the person accepting such notice was a

Manager or a peon, has not been even looked into by the trial court, vide the impugned order.

Having considered the matter, though in the opinion of this court, a separate application under Section 5 of the Limitation Act may not have been absolutely necessary for the trial court to decide whether or not to condone the delay, once some reasoning was given in the application seeking leave to defend the suit, even though otherwise limitation would be a substantive right available to the petitioner-plaintiff, however, that court was still required to go into the grounds for delay, consider them and then pass a reasoned order accepting or rejecting the said reasons.

Consequently, it is considered appropriate that the trial court be directed to look into the reasoning given by the respondent-defendants in trying to explain the delay in approaching that court vide their application dated 17.07.2019 (seeking leave to defend the suit), and to thereafter consider whether the delay in seeking such leave deserves to be condoned or not, even in terms of Rule 3 of Order 37 of the CPC (as amended).

In view of the above, the impugned order (Annexure P-5) is set aside even without issuing notice to the respondent-defendants, but obviously with liberty to them to present their case for condonation of delay before the trial court in terms of what has already been stated by them in their application, with that court to thereafter go into the matter in detail, as to whether, firstly, the person shown to be served with the notice issued was a peon or a Manager, and to thereafter go on to the merits of the reasons

given and then decide as to whether the delay deserves to be condoned or not.

Naturally, nothing stated hereinabove will be taken to be an observation of this court on the merits of the suit, for or against either party in the suit, with all observations made being only in the context of the fact that no effective reasoning has been given by the trial court for condoning the delay, after due consideration of the reasons given by the respondent-defendants in their application seeking leave to appeal.

This petition stands disposed of in the above terms.

13.01.2020
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes