

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

FAO-COM-19-2022 (O&M)
Date of decision: 04.08.2022

M/s Kaytx Industries Pvt. Ltd.

....Appellant

Versus

M/s Vijay Enterprises & others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Avnish Mittal, Advocate for the appellant.

AUGUSTINE GEORGE MASIH, J.

CM-53-FACOM-2022

Prayer in this application is for condonation of delay of 54 days in filing the appeal.

As per the pleadings, the assertion is that the delay of 54 days in filing the appeal has occurred under the belief and advise that the limitation for challenging the impugned order is 90 days, whereas on consulting the counsel, it came to light that the same is only 60 days as laid down under the Act, which resulted in delay of 54 days in filing the appeal. The mistake is *bona fide* and not intentional. It has also been averred that the delay in present litigation would not, in any case, benefit the applicant – appellant. The application is supported by an affidavit of the Director of the applicant – appellant/company.

For the reasons mentioned in the application, where the delay is found to be neither intentional nor deliberate, but under the *bona fide* belief and advise, we accept the prayer made in this application and condone the delay of 54 days in filing the appeal.

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Exemption is granted from filing certified and typed copies of

Annexure A-1 to A-3 and the same are taken on record, subject to all just exceptions.

Application stands disposed of.

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Challenge in this appeal is to the order dated 02.04.2022 passed by the Additional District Judge, Fatehgarh Sahib (hereinafter referred to as 'Court below') in a suit preferred under Order 37 of Code of Civil Procedure (hereinafter referred to as 'CPC') for the recovery of an amount along with interest from the appellant – company and its directors, who have been impleaded as defendants No.2 to 4, asserting them to be jointly and severally liable for the same, wherein an application under Order 39 Rule 1 and 2 read with Section 151 of CPC for restraining the appellant and other respondents from illegally and fraudulently transferring, selling, mortgaging, creating any charge or alienating their properties as detailed in the application at Point Nos. (i) to (vi) in any manner till the disposal of the suit, has been partly allowed restraining the appellant and the performa respondents from alienating the property as mentioned at Sr. No.(vi) situated at village Ambey Majra, Tehsil Amloh, District Fatehgarh Sahib, in the name of the appellant i.e. M/s Kaytx Industries Pvt. Ltd.

2. It is the contention of the learned counsel for the appellant that the suit against the performa respondents is not maintainable as the appellant is itself a legal entity and the liability, if any, is of the appellant alone. His further submission is that under the garb of an application under Order 39 Rule 1 and 2 read with Section 151 of CPC, the relief which has been claimed, if would have been granted as it is, the effect thereof would have been that the appellant and the performa respondents would have been restrained from using the properties

without restriction. Therefore, such a direction is not permissible. That apart, it is asserted that the basic principles and ingredients for claiming and granting injunction under Order 39 Rule 1 and 2 of CPC have not been discussed nor reasons assigned for accepting the prayer made in the application. The order impugned, therefore, cannot sustain and deserves to be set aside.

3. We have considered the submissions made by the learned counsel for the appellant but do not find ourselves in agreement with his submission as we do not find any illegality in the impugned order dated 02.04.2022 passed by the Additional District Judge, Fatehgarh Sahib.

4. The aspect with regard to the liability of the performa respondents vis-a-vis the appellant has rightly been observed by the Court below to be one which would be dependent upon the evidence to be led by the parties. The pleadings do indicate that there was a liability projected in the application and the suit.

5. As regards the contention of the learned counsel for the appellant that the basic ingredients with regard to the entitlement for the grant of injunction having not been discussed is found to be not correct as in our considered view, the said aspects have been looked into and dealt with by the Court below. The said ingredients are available in the pleadings as well. The principles being made out in the order passed by the Court below with the ingredients mentioned therein, the plea of the counsel for the appellant cannot be accepted.

6. As regards the submission of the counsel for the appellant that the the appellant and the performa respondents have been restrained from alienating the properties as have been mentioned in the application, suffice it to say that none of the properties which have been found to be standing in the

name of the directors have been restrained from being alienated. It is apparent from the order that the properties mentioned at Sr. No.(i), (ii) and (iii) have been found to be in the name of some Purshotam Lal Agarwal, who is director of the appellant – company but his properties have not been enjoined from being alienated. Qua properties mentioned at Sr. No.(iv) and (v), as no jamabandi was produced by the plaintiff/respondents, the said properties have not been included for being restrained and it is only the property as mentioned at Sr. No.(vi) situated at village Ambey Majra, Tehsil Amloh, District Fatehgarh Sahib, measuring 24 kanals as per the jamabandi for the year 2016-17 which has been restrained from being alienated as it stands in the name of the appellant – company.

7. In view of the above, the present appeal stands dismissed.

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In the light of the dismissal of the main appeal, no orders are required to be passed in this application for stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

04.08.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No