

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CM-10274-CII-2022 in/and
CR No.3137 of 2021
Date of Decision : 24.08.2022**

Markfed, Punjab, Chandigarh & Ors.

....Petitioners

VERSUS

M/s Kunal Rice Mills, Qadian

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gourav Verma, Advocate for the petitioners.

Mr. P.K. Mutneja, Sr. Advocate with
Ms. Suverna Mutneja, Advocate for the respondent.

ALKA SARIN, J. (Oral)

CM-10274-CII-2022

This is an application for restoration of the main revision petition (CR-3137-2021) which was dismissed for non-prosecution vide order dated 09.08.2022.

Notice of the application. Ms Suverna Mutneja, Advocate accepts notice and states that she has no objection if the main revision petition is restored.

For the reasons stated in the application, the same is allowed. The main revision petition is ordered to be restored to its original number. With the consent of learned counsel for the parties, the main petition is taken on Board today itself.

CM stands disposed off.

CR-3137-2021 (O&M)

The present revision petition has been filed under Article 227 of the Constitution of India challenging order dated 28.01.2021 dismissing the

application filed by the defendant-petitioners under Section 5 of the Limitation Act, 1963 for condoning the delay in filing the appeal.

The brief facts relevant to the present *lis* are that on 03.03.2015 the Trial Court decreed the suit for declaration and permanent injunction filed by the plaintiff-respondent against the defendant-petitioners. According to the defendant-petitioners their counsel did not convey to them that the judgment and decree had been passed against them and kept it as a secret from them and that the defendant-petitioners were not aware of the decision by the Trial Court. It is further the case that it came to the knowledge of the defendant-petitioners only on 10.05.2017 that the Trial Court had on 03.03.2015 decided the suit against them. Thereafter, on 12.05.2017 the defendant-petitioners applied for getting the copy of the judgment and decree and the same was supplied to them on 17.05.2017. The defendant-petitioners thereafter filed a first appeal which was accompanied by an application for condonation of delay. The application for condonation of delay was contested by the plaintiff-respondent.

The lower Appellate Court, on the basis of the pleadings of parties and evidence led, held that the defendant-petitioners were represented by a lawyer who was regularly appearing for them and that the suit was disposed off on merits. It was further noticed that AW-1, Shanti Saroop, who appeared on behalf of the defendant-petitioners had stated that the judgment and decree dated 03.03.2015 was passed behind the back of the defendant-petitioners and that the message regarding the passing of the judgment and decree dated 03.03.2015 had not been conveyed to the defendant-petitioners by the earlier counsel but the counsel himself was not

examined by the defendant-petitioners nor was there any evidence on the record that any action had been taken against the said counsel. It further came in the cross-examination of AW-1, Shanti Saroop, that the lawyer representing the defendant-petitioners was still on the panel and had been appearing for Markfed even after the decision of the suit on 03.03.2015. It has further been noticed that RW-1, Brij Mohan Julka, had categorically stated that in the arbitration proceedings pending between the parties before Sh. Raman Kaplish, Arbitrator, the Manager of M/s Kunal Rice Mills (plaintiff-respondent herein) had tendered his affidavit in the year 2015 and in the said affidavit it has categorically been stated regarding the passing of the judgment and decree dated 03.03.2015. There is no evidence on the record to controvert the said statement. Disbelieving the version of the defendant-petitioners, the application for condonation of delay was dismissed. Hence, the present revision petition.

Learned counsel for the defendant-petitioners has reiterated the stand as taken in the application for condonation of delay. He contended that the defendant-petitioners ought not to suffer because of the action/inaction by their counsel. Learned Senior counsel appearing on behalf of the plaintiff-respondent has vehemently contended that the defendant-petitioners have not approached the Court with clean hands inasmuch as there has been a concealment of material facts and that there is no explanation forthcoming as to why the said facts were concealed from the Court and a totally false and fabricated story was put-forth.

I have heard learned counsel for the parties.

In the present case it has come in the evidence that the factum of the passing of the judgment and decree dated 03.03.2015 was well within the knowledge of the defendant-petitioners in the year 2015 itself when the said fact was mentioned in the affidavit filed before the Arbitrator in the proceedings pending between the parties. Learned counsel appearing on behalf of the defendant-petitioners is not able to controvert the said fact. Further, the story set up by the defendant-petitioners that their counsel had not informed them regarding the passing of the judgment and decree dated 03.003.2015 is also rather unbelievable keeping in view the fact that it had categorically been stated by AW-1, Shanti Saroop, in his cross-examination that the previous advocate namely, Mr. Inderjit Vaid, still continues to be on the panel of the Markfed and has been regularly appearing in the cases.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the lower Appellate Court. The present revision petition being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

24.08.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO