

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

CR-5140-2019 (O&M)

Date of decision : 08.12.2022

M/s Sagar Steels

... Petitioner(s)

Versus

M/s Rohan Infotech & Anr.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Shailender Kashyap, Advocate for
Mr. Parshant Sethi, Advocate for the petitioner.

Mr. Rajesh Bansal, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 28.05.2019 (Annexure P-4) granting leave to defend to the defendant-respondents.

Learned counsel for the plaintiff-petitioner would contend that the suit under Order 37 of the Code of Civil Procedure, 1908 (CPC) was filed on 26.10.2018. The defendant-respondents put in appearance on 29.11.2018, though they were served on 30.10.2018. Thereafter, they filed an application under Order 7 Rule 11 CPC which was dismissed on 16.03.2019 and it was only on 06.04.2019 that an application for leave to defend was filed. Learned counsel for the plaintiff-petitioner would further contend that the application for condonation of delay was not decided by the

Trial Court before allowing the application for leave to defend. According to

the counsel, the plaintiff-petitioner had contested both the applications and filed replies to the same.

Per contra, learned counsel for the defendant-respondents has contended that a detailed/reasoned order has been passed by the Trial Court for granting leave to defend which deserved to be upheld. According to counsel, once leave to defend was granted it would imply that the delay stood condoned.

Heard.

In the present case, the defendant-respondents filed an application for condonation of delay as well as an application seeking leave to defend. Both the applications were before the Trial Court on 28.05.2019 as is patent from a perusal of the opening paragraph of the impugned order. The plaintiff-petitioner had contested both the applications. However, there is no decision on the application for condonation of delay and only the application seeking leave to defend was allowed. Without condoning the delay, the Trial Court could not have allowed the application seeking leave to defend. Order 37 Rule 3(7) CPC reads as under :

“(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.”

The impugned order allowing leave to defend without condoning the delay cannot be sustained. There being a separate application for condonation of delay, the Trial Court ought to have decided the same too.

In view of the above, the impugned order is set aside. The Trial Court is directed to decide the application for condonation of delay as well as the application seeking leave to defend afresh, on merits, in accordance with law.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

08.12.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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