

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.113

CR No.4899 of 2022

Date of Decision: 16.12.2022

Malwa Industries and Marketing Forti-Chemical
Cooperative Society Limited

.... Petitioner

Versus

M/s Cosco Shipping Lines India Private Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Namit Gautam, Advocate for the petitioner.

TRIBHUVAN DAHIYA, J. (ORAL)

This revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned judgment dated 29.09.2022 (Annexure P-15) passed by the lower appellate Court whereby order dated 03.08.2021 passed by trial Court (Annexure P-13), dismissing the respondent/defendant's application under Order IX Rule 13 of CPC, was reversed, and the *ex-parte* decree dated 02.08.2018 was set aside.

2. As per facts apparent on record, the suit in question was filed on 14.11.2017 and the respondent/defendant was proceeded against *ex parte* on 23.04.2018. Thereupon, *ex parte* decree was passed on 02.08.2018 (Annexure P-9). It was only during execution of the *ex parte* decree that the respondent/defendant came to know about the same, i.e., on 03.11.2018, and moved an application (Annexure P-11) for setting it aside. The application was dismissed by the trial Court vide order dated 03.08.2021. The appeal against it was allowed by the lower appellate Court, vide the impugned judgment dated 29.09.2022, holding that proper service of notice upon the defendant was not effected before he was proceeded against *ex parte*.

Accordingly, the *ex parte* decree was set aside, subject to payment of Rs.12,000/- as costs to the petitioner/plaintiff.

3. Learned counsel for the petitioner has argued that there was a delay of five days in filing the application for setting aside the *ex parte* decree from the date of its knowledge, i.e., 03.11.2018. Despite that, neither any application for condonation of delay was filed, nor was the delay condoned by the lower appellate Court while passing the impugned judgment. Therefore, it cannot be sustained. In support of the contentions, he has relied upon judgment of this Court passed in *Amarjit Singh and another v. Balwant Singh* 2000(3) R.C.R. (Civil) 81.

4. On considering the facts of the case, there is no denial that proper service upon the defendant was not effected before he was proceeded against *ex parte*. The only issue raised is, in the absence of any application for condonation of delay, the application under Order IX Rule 13 CPC could not have been allowed. In case the lower appellate Court has entertained and finally allowed the application/appeal, taking into account the explanation put forth by the defendant that the delay of five days has been caused due to making of enquiries about the *ex-parte* decree, no exception can be taken to it, especially when there was no service of notice upon the defendant before he was proceeded against *ex-parte*. The law of limitation is to ensure timely action by the litigants and quick disposal of cases. It is not meant to hamper substantive justice; rather, to promote the same by bringing parties to action within reasonable time for adjudication of their rights.

5. In the instant case, condoning of five days' delay on the defendant's part, at best, can be termed an irregularity, that cannot defeat the substantive right of the defendant to contest the suit for recovery filed against him. The stated delay would stand condoned impliedly by passing of

the impugned judgment dated 29.09.2022, as the Court below has the jurisdiction to condone the delay and entertain the application. The impugned judgment, therefore, does not suffer from any jurisdictional error, nor does it defeat the objective of the law of limitation.

6. The judgment relied upon by the learned counsel for the petitioner in *Amarjit Singh* case (*supra*) is on the point that limitation commences from the date of knowledge of the *ex-parte* decree, as against from date of the decree, when the notice or summons were not duly served. It is apparent in the facts of this case that the respondent/defendant has filed the application for setting aside the *ex parte* decree on coming to know about it, as admittedly notice of the suit was not served upon him. In the cited case, there was delay of two years in filing the application under Order IX Rule 13 CPC, without any satisfactory explanation. That is why it was not condoned. In the instant case, the stated delay is of five days, which will stand impliedly condoned, as discussed above. Therefore, the reliance placed by learned counsel for the petitioner on the judgment is misplaced and does not advance his case.

7. In view thereof, there is no ground to interfere with the judgment passed by the lower appellate Court.

8. Petition stands dismissed.

9. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

16.12.2022
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes