

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

**CR No. 3912 of 2018 (O&M)
Date of decision: 19th April, 2023**

Punjab State Civil Supplies Corporation Ltd.

Petitioner

Versus

M/s Satgur Sewak Rice Mills and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. M. S. Batth, Advocate for the petitioner.

AVNEESH JHINGAN, J (Oral):

1. This revision petition is filed aggrieved of order dated 15.2.2013 dismissing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') in default; order dated 20.4.2015 dismissing the application for restoration in default and order dated 8.12.2017 dismissing the application for restoration of application for restoration as time barred.

2. The brief facts are that the petitioner entered into a custom milling agreement with M/s Satgur Sewak Rice Mills (hereinafter referred to as 'the miller'). There was dispute between the parties and the matter was referred to the arbitrator at the instance of the petitioner. The proceedings culminated in award dated 1.2.2008. Thereafter, supplementary award was passed on 24.3.2008. The objections filed by the petitioner were dismissed in default on 15.2.2013. The application filed for restoration of the objections was also dismissed in default on 20.4.2015. Thereafter an application for re-calling of the order dismissing the application in default accompanied by an application for condonation of delay of 228 days was

filed. The application for condonation of delay was dismissed, hence the present petition.

3. Learned counsel for the petitioner submits that the panel counsel of the petitioner had not updated the progress of the case. On gaining knowledge that objections were dismissed for non-prosecution, certified copy of the order was applied and another counsel was engaged for filing the application for restoration. On failure of second counsel to do the needful, the petitioner had to engage another counsel and in that process delay of 228 days occurred.

4. As per office report, two partners of the respondent-firm had died and other partner refused to receive the summons and hence the respondent was proceeded against *ex parte*.

5. Considering that objections under Section 34 of the Act were not considered on merits and were dismissed for non-prosecution, the petitioner was deprived of the statutory remedy. It is settled law that the party should not be made to suffer due to conduct of the counsel. Reference in this regard is made to the decision of the Supreme Court in ***Rafiq and another v. Munshilal and another, AIR 1981 SC 1400***. Sufficient cause has been shown by the petitioner for explaining the delay of 228 days in filing the application for re-calling of order dated 20.4.2015.

6. Having conspectus of the facts, the order dismissing the application as time barred is set aside and the delay in filing the application is condoned.

7. The petition stands disposed of.

[AVNEESH JHINGAN]
JUDGE

19th April, 2023
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1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No