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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3439 of 2019(O&M)

DATE OF ORDER: 09.02.2023

Raj Kumar

.....Appellant

Vs.

Shah Najar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr.Surinder Kumar Daaria, Advocate for the appellant.

Nidhi Gupta, J.**CM-12002-CII-2019**

Prayer in the application for condonation of delay of 577 days in filing the present appeal is filed. The same is allowed subject to just exceptions, and the delay is condoned.

MAIN APPEAL:

Present appeal has been filed by the claimant against order dated 12.05.2017, whereby, the appellant's claim petition was dismissed under Order 17 Rule 3 CPC for want of evidence as well as for want of prosecution.

It is, *inter alia*, submitted by learned counsel for the appellant that the impugned order is, *prima facie*, unsustainable on account of the fact that the counsel for the appellant had not informed the appellant at

any point of time for leading evidence; and after filing the claim petition, appellant approached the counsel several times but *farzidates* were given by the counsel on one pretext or the other. It is submitted that even after passing of the impugned order dated 12.05.2017, the appellant was not informed for over a period of one year that the claim petition had been dismissed. It is submitted that resultantly, delay of 577 days has been occasioned even in filing the present appeal.

The above said averments on behalf of the appellants are supported by affidavit in the Application No.12002-CII-2019 filed for condonation of delay of 577 days, as well as in the main appeal. In support, learned counsel for the appellant relies upon judgment of this Court rendered in ***Municipal Committee, Loharu Versus Jagdish Kumar and others, 2017(2), R.C.R.(Civil)*** 568. No other ground is raised by the appellant.

I have heard learned counsel for the appellant.

Perusal of the impugned order shows that it has been recorded therein that the appellant:

“has availed of six effective opportunities including last opportunity for concluding this entire evidence but even a single witness has not been examined by the petitioner. It is already 3:20 P.M. Even the peon was sent to seat of the counsel for the petitioner, but still none has appeared. The petitioner does not seem interested in pursuing the matter any further. Thus, no further wait is justified. The claim petition is, hereby, dismissed under Order 17 Rule 3 CPC for want of evidence as well as for want of prosecution.”

Perusal of the Grounds of Appeal show, thatto explain the above dereliction, only a vague averment has been made that *‘some days ago, petitioner has disclosed all these facts to one Clerk (munshi) of the Nuh Court, then he has searched about the case and found that the claim petition of the appellant has been dismissed vide impugned order dated 12.05.2017’.*

However, no details have been divulged as to how, by whom i.e. which clerk by name, and on what date was the appellant informed regarding the dismissal of his claim petition.

Moreover, from the above averments of the appellant, it is also evident that he has been visiting the Tribunal at Nuh himself. For this reason also, the case put forward by the appellants does not inspire confidence. Even otherwise, even in the Grounds of Appeal, no information has been provided regarding the purported injuries alleged to have been suffered by the appellant.

Accordingly, present Appeal stands Dismissed on merits, as well as on ground of delay.

Pending applications, if any, also stand disposed of.

09.02.2023
kanika

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No