

In the High Court of Punjab and Haryana, at Chandigarh

S.A.O. No. 51 of 2019 (O&M)

Date of Decision: 27.07.2023

M/s Medico Agencies

... Appellant(s)

Versus

M/s Alchem International Limited

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas Kumar, Advocate
for the petitioner(s).

Jasdev Singh Mehndiratta, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The challenge is to the correctness of an order dated 30.03.2019, passed by the Additional District Judge while remitting the case back to the trial Court for deciding on merits.

2. In fact, a suit for recovery of ₹10,90,588/- was filed in the year 2011. The defendant contested the suit while claiming the lack of territorial jurisdiction with the Courts at Faridabad where the suit was filed. A preliminary issue was framed and the trial Court held that the Courts at Faridabad have no jurisdiction. The first appeal along with an application to condone the delay of 35 days in filing the appeal was filed. The First Appellate Court has held that a part of cause of action arose in the territorial jurisdiction of Faridabad. In fact, the plaintiff company has a factory outlet in Faridabad. The dispatch of goods (medicines) from Faridabad was being regularly made in response to the demand orders sent by the defendant. Even the demand notice was sent to the defendant from Faridabad. In this case, the suit has been filed to recover an unpaid amount of the medicines which have been allegedly supplied by the plaintiff to the defendant. Thus, in accordance with the Order XLI Rule 23 of the Code of Civil Procedure,

1908 (hereinafter referred to as “CPC”), the suit has been remitted back to

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the trial Court for deciding the suit on merits.

3. The learned counsel representing the appellant submits that the First Appellate Court cannot decide the appeal without deciding the application for condonation of delay. He relies upon the following judgments:-

- “(i) *Des Raj v. Om Parkash and Bidar Lal 1985 PLJ 442;*
- (ii) *Ragho Singh v. Mohan Singh and Others (2001)9 SCC 717; And*
- (iii) *Mukhtiar Singh v. Haryana State Electricity Board (Now DHVVNL) And Others (Regular Second Appeal No. 1382 of 2005, decided on 08.05.2007).*

4. The learned counsel representing the appellant further submits that the registered office of the plaintiff company is at Delhi, therefore, the Court situated in Faridabad has no jurisdiction. He further submits that all the communications made by the defendant are with the office registered in Delhi.

5. This Court has considered the submissions of learned counsel representing the parties. It is well settled that the rules of procedure are the handmaids of justice. The procedural objections cannot be given preference over the substantive rights of the parties, unless they are specifically prohibited by the Statute. In the application filed for the condonation of delay, the plaintiff has stated that a certified copy of the judgment and decree was applied on 12.12.2016. It was prepared on 16.12.2016, whereas the same was collected on 07.01.2017. He submits that the father of the authorized representative of the company suffered from a heart problem which resulted in delay in filing the appeal. The total delay is 35 days only.

6. The learned counsel representing the appellant has not made any submission “why the delay should not be condoned?” Also, the reasons given in the application to seek condonation of delay are found sufficient. Hence, the delay is condoned.

In view of the aforesaid position, the question that arises before

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this Court for examination is “whether this Court should merely set aside the judgment passed by the First Appellate Court on account of a curable procedural irregularity which can be rectified?” In the opinion of the Court, there was an inadvertent mistake by the First Appellate Court which shall not result in defeating the ends of justice. Hence, the aforesaid procedural irregularity is condoned and stands rectified.

8. The next argument of the learned counsel representing the appellant is with regard to the territorial jurisdiction. He does not dispute that the medicines were being supplied from Faridabad as and when the demand came from the defendant. Section 20(c) CPC provides that the suit can be instituted where the cause of action, wholly or in part, arises. In such circumstances, the conclusion drawn by the First Appellate Court does not suffer from any error.

9. Keeping in view the aforesaid facts and discussion, no ground is made out to interfere. Hence, the present appeal is dismissed.

10. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 27, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No