

CM No. 14757-CII of 2016 in/and
FAO No. 4281 of 2016 (O&M)

2023:PHHC:045590

[1]

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

CM No. 14757-CII of 2016 in/and
FAO No. 4281 of 2016 (O&M)
Date of decision: 28th March, 2023

M/s Kaku Rice Mill and another

Applicants-appellants

Versus

Punjab State Warehousing Corporation and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Nandan Jindal, Advocate for the applicants-appellants.
Mr. Jastej Singh Arora, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') is accompanied by applications seeking condonation of delay of 229 days and 234 days delay in filing and re-filing the appeal, respectively.

Learned counsel for the applicants submits that proprietor of the concern is a heart patient and was under regular treatment. It is further submitted that after recovery from illness he approached the counsel, applied for certified copy and filed the present appeal.

Learned counsel for the non-applicants opposes the prayer.

Before proceeding further, it would be relevant to cite following decisions:

The Supreme Court in ***Pundlik Jalam Patil (D) by LRs. Versus Exe. Eng. Jalgaon Medium Project and another, 2008 (17) SCC 448***, has held as under:

“..... It was its duty to prefer appeals before the Court for consideration which it did not. There is no explanation

forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and 'do not slumber over their rights.'

The Supreme Court in case of ***Tribhuvanshankar Vs. Amrutlal, 2014 (1) RCR (Civil) 206***, has laid down that the fundamental policy behind the limitation is that if a person does not pursue his remedy within the stipulated time-frame, the right to sue gets extinguished.

In case of ***Amalendu Kumar Bera and others Versus The State of West Bengal 2013 (2) RCR (Civil) 534***, the Supreme Court has held that the delay in filing the appeal or revision cannot and shall not be mechanically condoned in the absence of 'sufficient cause' shown. In case of serious negligence, the delay should not be condoned.

The Supreme Court in case of ***Basawaraj and another v. Special Land Acquisition Officer 2017(3) PLR 299***, while dealing with the scope of "sufficient cause" has laid down as under:

".....The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."

A bald statement has been made that the proprietor was sick. There is no prescription or evidence annexed with the application. No dates have been mentioned of proprietor falling sick and recovering. Further as to whether he was in a position to do his routine work or not. The impugned order was passed in the presence of counsel for the applicants. It is not the case set up that the applicants were not aware of the order passed moreover, presence of proprietor was not needed for obtaining copy of the order.

No sufficient cause is pleaded or argued for condoning the delay. Consequently, the application for condonation of delay is dismissed.

Resultantly, the appeal is dismissed as time barred.

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Since the main appeal has been dismissed, pending application(s), if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

28th March, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |