

2024:PHHC:093748



144 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7882-2019 (O&M)
Decided on:-24.07.2024

Metal Sales Corporation thr. its Partner and othersPetitioners..

vs.

M/s Parkway Sales Pvt. Ltd. thr. its DirectorRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Harish Khanna, Advocate,
for the petitioners.

Mr. Vishal Aggarwal, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

1. By way of present revision petition filed under Article 227 of the Constitution of India, challenge has been laid to an order dated 22.10.2019 passed by the Court of Additional District Judge, Chandigarh, whereby an application filed under Section 5 of the Limitation Act, seeking condonation of delay of 335 days in filing CA No.2424 of 2018, titled as “Metal Sales Corporation and others vs. M/s Parkway Sales Pvt.Ltd.”, stands dismissed.

2. In the present case, respondent-plaintiff filed a suit for recovery for a sum of Rs.8,22,233/- along with interest, against the petitioners-defendants.

3. At the very first instance, the suit was referred to the Mediation and Conciliation Centre, District Court at Chandigarh and parties were

directed to appear before the aforesaid forum on 16.02.2016. Thereafter, report from the concerned Mediation Centre was received on 11.07.2016. Later, the petitioners-defendants chose not to defend the suit and were proceeded against ex-parte on 02.11.2016, resulting into passing of ex-parte judgment and decree dated 29.11.2017 in favour of respondent-plaintiff and against the petitioners-defendants.

4. Aggrieved thereof, Civil Appeal No.2424 of 2018, titled as *“Metal Sales Corporation and others vs. M/s Parkway Sales Pvt.Ltd.”*, came to be filed at the instance of petitioners-defendants before the first Appellate Court on 03.12.2018 along with an application invoking Section 5 of the Limitation Act, seeking condonation of delay of 335 days in filing of the appeal. The application for condonation of delay was opposed at the instance of respondent-plaintiff. The first Appellate Court vide its order dated 22.10.2019, dismissed the same as well as the main appeal. Hence, the present petition.

5. While referring to the impugned order, learned counsel for the petitioners submits that the matter remained pending before the Mediation Centre at Chandigarh till 11.07.2017 and therefore, the order passed by the trial Court on 02.11.2016 in the suit while proceeding the petitioners-defendants as ex-parte was wholly uncalled for and the suit was decided ex-parte without even affording opportunity of hearing to the petitioners-defendants or even without granting them a chance to defend themselves.

Learned counsel vehemently submits that though the delay of 335 days in filing the appeal was very well explained in the application, yet, first Appellate Court committed illegality while declining the prayer made in this regard. He further submits that passing of the impugned order has

caused serious prejudice to the rights of the petitioners-defendants as they were not able to defend themselves neither in the suit nor even at the first appellate stage, thus, prays that the impugned order passed by the first Appellate Court be set aside.

6. On the other hand, learned counsel representing the respondent-plaintiff submits that the proceedings from the Mediation Centre at Chandigarh were received back by the Trial Court on 11.07.2016 whereas, the date recorded in this regard in the impugned order as 11.07.2017 was merely a typographical error. He also refers to an order dated 11.07.2016 passed by learned Civil Judge (Junior Division), Chandigarh in the civil suit.

Learned counsel further submits that the petitioners-defendants despite being aware of the proceedings, firstly chose not to defend the suit and thereafter, even the appeal was presented after an unexplained delay of 335 days and thus, the impugned order passed by the first Appellate Court warrants no interference.

7. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made on behalf of the petitioners.

8. At the outset, it may be pointed out here that there is typographical error in the impugned order passed by the trial Court as the date of return of the proceedings from Mediation Centre to the trial Court is infact 11.07.2016 instead of 11.07.2017. The order dated 11.07.2016, passed by the Civil Judge (Junior Division), Chandigarh in the Civil Suit titled as *“Metal Sales Corporation and others vs. M/s Parkway Sales Pvt.Ltd.”*, is extracted hereunder:-

“ **MS. Parkway** vs. **MS Metal Sales**

Present: Advocate SH.PM Goel, counsel for the plaintiff.

Advocate Sh. Harish Khanna, counsel for the defendant

Report from mediation centre received back in which compromise between the parties have not settled. Written statement on behalf of defendant not filed. Adjournment sought, which is considered and allowed. Now, for filing written statement on behalf of defendant, case stands adjourned for 17.08.2016, subject to payment of cost of Rs.200/- to be paid in DLSA.

*(Ashish Thathai)
CH(JD)/CHD/11.07.2016”*

9. In the aforementioned circumstances, the cause put forth by the petitioners-defendants that they were wrongly proceeded against ex-parte by the Trial Court on 02.11.2016 while as on the date, the proceedings were pending before the Mediation Centre, Chandigarh and were returned to the trial Court only on 11.07.2017 is wholly misplaced/ misconceived and against the records and as such, the petitioners-defendants cannot draw any benefit about it.

Furthermore, despite having put in appearance before the trial Court and also having participated in the mediation proceedings, the petitioners-defendants willingly/consciously chose not to defend the civil suit and thus, were proceeded against ex-parte on 02.11.2016, thereby, resulting into passing of ex-parte judgment and decree dated 29.11.2017 against them.

Still further, the petitioners-defendants despite having complete knowledge about the factum of filing of the suit and also about its pendency, being not bothered to inquire about its outcome, took almost one year in challenging the judgment and decree dated 29.11.2017, passed against them

by way of Civil Appeal No.2424 of 2018 along with an application for seeking condonation of delay of 335 days in filing the same. In such circumstances, the petitioners were never diligent enough in pursuing the suit filed against them and always acted negligently. Moreover, from the contents of the application filed under Section 5 of the Limitation Act, no plausible explanation or sufficient cause can be deciphered towards the delay caused in filing the appeal. In such circumstances, no illegality or perversity can be found with the discretion exercised by the first Appellate Court while declining the application filed under Section 5 of the limitation Act, at the instance of petitioners-defendants. It is evident that whole effort of petitioners-defendants has been to delay the recovery proceedings initiated against them.

10. Accordingly, in view of the submissions made herein-above, the present petition is dismissed.

11. Pending application, if any, also stands disposed of.

24.07.2024
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No