

(2017) 03 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1967 of 2017 (O&M)

Chandigarh Industrial & Tourism Development Corporation
Ltd.

APPELLANT

Vs

Jakson Engineers Ltd.

RESPONDENT

Date of Decision : 24-03-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : (2017) 2 LawHerald 1062

Hon'ble Judges : Mr. G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : Mr. Vishal Gupta, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.(Oral) - The present appeal is directed against the order dated 20.01.2017, whereby the Additional District Judge, Chandigarh has dismissed the application for restoration under Order 9, Rule 9 CPC read with Section 151 CPC for restoration of the case and costs of Rs. 3,000/- were imposed.

2. The reasoning given by the Court is that filing of the application is a mockery of the process of the Court and to prolong the proceedings, which are mainly against the award. The dismissal in default was on 21.08.2014 and the application was filed only on 21.09.2015, after receiving the summons of execution. No enquiry had been made by the appellants and, therefore, there was no sincerity and, thus only an eye wash was being done by the Corporation who was not interested in pursuing the objections.

3. It is not disputed that the award in question was passed on 02.11.2004 (Annexure A-1). The objections were filed on 02.02.2005 (Annexure A-2), which were dismissed in default on 26.02.2011 (Annexure A-3) for want of prosecution. An application for restoration was filed after a period of more than one month on

07.04.2011 (Annexure A-4), which again was not pursued and again a dismissal order was passed on 18.10.2012 (Annexure A-5). Another application was filed for restoration, thereafter, in which reply was filed by the respondents and on 21.08.2014 (Annexure A-6), the said application was further dismissed on account of non-appearance on behalf of appellant-corporation. Thereafter, the third application was filed for restoration on the following grounds only on 19.09.2015 (Annexure A-7), after a period of more than one year. The explanation given for the date of knowledge was held out as under:-

"That the petitioner came to know about the dismissal of the application for restoration only when the summons for the execution of the award in question was served upon the applicant. The applicant duly approached their counsel, however, since no satisfactory reply was received from the counsel and as such another counsel was engaged and when the present counsel appeared before the Court in the Execution Application it came to his knowledge that the application for restoration of the objections have already been dismissed on 21.08.2014."

The said application has now been dismissed. The above sequence of event would go on to show that there is apparent lethargy and negligence on the part of the appellant-corporation and the said conduct cannot be condoned in any manner. From 21.08.2014 onwards it made no effort to contact its counsel. Only when execution proceedings were filed and summons were issued, it woke up and, thus, no sufficient cause has been shown even otherwise for restoration of a lost cause. The application has rightly been dismissed.

4. Accordingly, there is no merit in the present appeal and the same is dismissed in limine. This Court, however, refrains from imposing further costs upon the appellant-corporation.