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on or after 1st July, 1993, shall be entitled to the same. Insofar as those, who retired on or after 1st April, 1995, are concerned, there is no dispute with regard to their entitlement to the benefit of Annexure P-5.

(37) The petition is, thus, partly allowed, in the manner fully indicated above. The respondents are directed to calculate gratuity of those, who retired on or after 1st July, 1993 and made over to them the same within six weeks from today. The parties are, however, left to bear their own costs.

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**J.S.T.**

*Before M.M. KUMAR, J*

M/S STANGEN PHARMACEUTICALS,—*Petitioner*

*versus*

RAKESH GUPTA & OTHERS,—*Respondents*

C.R. No. 128 of 2002

22nd April, 2002

*Code of Civil Procedure, 1908—Ss.114, 148 & 151—Suit against the order of termination of services filed—Defendant failing to file the written statement and also to make payment of the costs to the plaintiff despite three effective opportunities having been granted to him—Trial Court striking of the defence—Dismissal to the applications of the defendant seeking review of the order, extension of time to file the written statement and to make payment of costs by the Trial Court—Order upheld by the High Court—Order of Trial Court does not suffer from any material irregularity or illegality—Petition liable to be dismissed.*

Held, that this revision petition is devoid of merit and the same is thus, liable to be dismissed. The order dated 4th December, 1997 does not suffer from any material irregularity or illegality or an error of jurisdiction which may warrant interference of this Court under Section 115 of the Code. Therefore, I have no hesitation in dismissing the revision petition against the order dated 4th December, 1997.

(Para 7 & 8)

Sanjiv Walia, Advocate for the petitioner.

Vimal Kumar Advocate for the respondents.

## JUDGMENT

*M.M. Kumar, J.*

(1) This is a revision petition directed against the order dated 4th December, 1997 passed by the Additional Civil Judge (Senior Division), Ambala striking off the defence of the defendant—petitioner on the ground that costs were not paid and no written statement was filed despite three effective opportunities having been granted to it. Alongwith the revision petition, an application under section 5 read with Section 14 of the Limitation Act, 1963 (for brevity, 'the Act') and also Section 115 of the Code of Civil Procedure, 1908 (for brevity, the Code) seeking condonation of delay of 1396 days has also been filed claiming that 1411 days have been spent in a *bona fide* belief prosecuting another civil proceeding in the trial Court itself.

(2) Brief facts of the case unfolded in the pleadings of this case necessary to decide the controversy raised in this petition are that the plaintiff—respondent filed a suit for declaration to the effect that the order dated 17th September, 1996 passed by defendant—respondent No. 2 terminating the services of the plaintiff—respondent as Professional Service Representative is illegal, arbitrary, unconstitutional and against the principles of natural justice etc. with consequential relief of permanent injunction restraining the defendant—petitioner from enforcing the afore—mentioned order. Notice of the suit was given and the defendant—petitioner appeared in the trial Court on 19th August, 1997 when the case was adjourned to 30th September, 1997 for filing of the written statement by him. On 30th September, 1997, no written statement was filed by the defendant—petitioner and the case was adjourned to 5th November, 1997. A request for adjournment for filing of written statement was made and the case was adjourned to 4th December, 1997 subject to payment of Rs. 300 as costs. On 4th December, 1997, neither the costs were paid despite demand nor the written statement was filed which resulted into passing of the following order :

“Cost has been demanded but not paid. Even, written statement on behalf of defendant No. 1 is not ready. One more date is requested, which is opposed. Since, defendant No. 1 has already availed three effective opportunities to file written statement and the same is

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not ready. Even, it is not ready to pay the cost despite demands made in this regard. So the defence of defendant No. 1 is struck off. Now to come up on 24th January, 1998 for PWs.”

(3) Against the order dated 4th December, 1997, the defendant—petitioner filed two applications. One application was filed under section 114 read with section 151 of the Code for review of order and the other application was filed under section 148 read with section 151 of the Code seeking extension of time to file the written statement and make payment of costs of Rs. 300 to the plaintiff—respondent. Both these applications were dismissed on 26th July, 2001 by the Additional Civil Judge (Senior Division), Ambala City and against the order dated 26th July, 2001 a Civil Revision No. 5734 of 2001 was filed which has also been dismissed on 5th November, 2001 by this Court. The order passed by Hon’ble Mr. Justice Mehtab S. Gill reads as under :

“Heard.

The learned counsel for respondent No. 1 caveator stated that the application for review of order dated 4th December, 1997 was decided by the lower appellate court after a long time, I have gone through the order dated 26th July, 2001 passed by the Additional Civil Judge (Senior Division), Ambala City.

The order dated 4th December, 1997 passed by the trial court attained finality as neither any appeal nor any revision was filed against that order. Till date the order dated 4th December, 1997 has remained unchallenged.

I do not find any infirmity in the order passed by the Additional Civil Judge (Senior Division), Ambala City. The Civil Revision is dismissed.”

(4) I have heard Shri Sanjiv Walia learned counsel for the defendant—petitioner and Shri Vimal Kumar, learned counsel for the plaintiff—respondent and have perused the record with their assistance.

(5) Shri Sanjiv Walia, learned counsel for the defendant—petitioner has argued that the application for review filed under Section 114 read with Section 151 of the Code seeking review of the

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order dated 4th December, 1997 and also the application seeking extension of time filed under section 148 read with Section 151 of the Code for filing the written statement and payment of costs of Rs. 300 would amount to prosecuting another civil proceeding in a *bonafide* belief. Therefore, the period of 1411 days spent in pursuing those applications deserves to be excluded from the period of delay as contemplated by section 14 of the Act. He has relied upon Full Bench judgment of Delhi High Court in the case of *M/s. Panchseel Electronic Corporation, Sonapat versus Jupiter General Insurance co. Limited., Bombay (1)* and argued that mistake of the counsel while prosecuting diligently the remedy of review under Section 114 of the Code or the remedy of extension of time under Section 148 of the Code would amount to pursuing a civil proceedings with a *bona fide* belief based on the advice tendered by the counsel within the meaning of Section 14 and, therefore, it would also constitute a sufficient cause within the ambit of Section 5 of the Act. Presuming that delay is condoned, Shri Walia has assailed the order dated 4th December, 1997 on merit by arguing that once the written statement is ready for filing, the same should have been taken on record and the case should have been heard on merits.

(6) On the other hand, Shri Vimal Kumar, learned counsel for the plaintiff—respondent has argued that the order passed by the Additional Civil Judge on 26th July, 2001 dismissing both the applications of the defendant—petitioner were challenged in Civil Revision No. 5734 of 2001 and the revision petition stood dismissed on 5th November, 2001. On merits, he has urged that order dated 4th December, 1997 is consistent with the view taken by a Full Bench of this Court in the case of *Shri Anand Parkash versus Shri Bharat Bhushan Rai and another (2)*. In that case it has been laid down that in the event of the party failing to pay the costs on the date next following the date of the order imposing costs, it is mandatory on the Court to disallow the defence. Therefore, there was no option with the Additional Civil Judge except to strike off the defence of the defendant—petitioner.

(7) I have thoughtfully considered the respective submissions made by the learned counsel for the parties and I am of the view that

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- (1) 1975 PLR Delhi 66  
(2) 1981 PLR 555

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this revision petition is devoid of merit and the same is, thus, liable to be dismissed. The submission of the learned counsel for the plaintiff—respondent is substantially supported by the view taken by the Full Bench in *Shri Anand Parkash's* case (supra). The observation of the Full Bench of this Court reads as under :

“In accordance with the majority decision it is held that in the event of the party failing to pay the costs on the date next following the date of the order imposing costs, it is mandatory on the Court to disallow the prosecution of the suit or the defence, as the case may be and that no other extraneous consideration would weigh with the Court in exercising its jurisdiction against the delinquent party. However, where the costs are not paid as a result of the circumstances beyond the control of the defaulting party, then the Court will be well within its jurisdiction to exercise its power under section 148 of the Code in favour of the defaulting party is a strong case is made out for the exercise of such jurisdiction.”

(8) The principle laid down in the Full Bench judgment if applied to the facts of the present case it becomes clear that the order dated 4th December, 1997 does not suffer from any material irregularity or illegality or an error of jurisdiction which may warrant interference of this Court under section 115 of the Code. Therefore, I have hesitation in dismissing the revision petition against the order dated 4th December, 1997.

(9) In view of the view taken by me with regard to legality of order dated 4th December, 1997 I do not consider it appropriate to express any opinion on the application filed under section 5 read with Section 14 of the Act.

(10) For the reasons recorded above, this revision petition fails and is dismissed.

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J.S.T.