

Date of decision: 25th March, 2008

+ **CS(OS) 480/1995**

M/S EXPORTS INDIA Plaintiff
Through None.

versus

M/S RIBA TEXTILES P.LTD. Defendant
Through Mr.K.R.Chawla, Advocate.

CORAM:**MR. JUSTICE S. RAVINDRA BHAT**

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat (Open Court)**IA 8364/2005 (O.9 R.13 CPC)**

1. This is an application for condonation of delay in filing the application IA 4858/2005 under Order IX Rule 13 CPC seeking setting aside of a decree dated 29.10.2003.

2. The suit was for recovery of Rs.26,29,828/-. The applicant, arrayed as defendant had been served; it entered appearance through counsel and filed a written statement on 12.3.1996. Apparently, after some dates of hearing, the applicant ceased to be represented on

6.2.1997. This Court took note of the continued absence of the defendant and set it down ex-parte.

3. The suit thereafter proceeded for about six years during which the applicant made no attempt to participate in the proceedings either by seeking reversal of the order dated 6.2.1997 or joining at any stage of the proceeding. Ultimately after considering the merits, the suit was decreed on 29.10.2003.

4. It is averred inter alia in the application for setting aside the decree that the defendant – applicant's counsel ceased to be in communication with it after 6.2.1996 and did not appear in the proceedings. It is submitted that defendant was under an impression that the matter was defended by counsel engaged by it. It claims to have become aware of the ex-parte decree only on 8.3.2005 from its Bank when the latter informed it about the receipt of warrant of attachment whereby the account of the defendant to an extent of Rs.54,33,743/- was directed to be attached. The defendant was surprised to know such information from the Bank and immediately contacted its counsel, who had not given any reason about the ex-parte decree. When no satisfactory reply was received from the counsel, the defendant engaged a new counsel, Mr.K.R.Chawla, who applied for inspection. The inspection was carried out on 5.4.2005 and the application for setting aside the decree was filed on 7.4.2005.

5. Substantially, the same averments have been made in the application for condonation of delay. It has also been urged in both applications that defendant's office had been shifted from Bhikaji Cama Place to its present address at Kalkaji which was informed to its counsel.

6. Mr. K.R.Chawla, learned counsel for the respondent, relied upon a notice furnished in the newspapers on 10.9.1996 under Section 154 of the Companies Act, 1956 informing its members that an Annual General Meeting of the Company would be held on 27.9.1996 at the office address, i.e. DD-14, Nehru Enclave, Near Kalkaji Post Office, New Delhi. He also relied upon a copy of the letter written by the Stock Exchange, Ahmedabad to the defendant's office at Nehru Enclave on 13.6.1996 taking note of the changed address. It is further urged that during pendency of the suit, the plaintiff had caused a notice under Order 12 Rule 8 CPC to be issued to the defendant's office which was returned unserved and is part of the record being Ex.P-52.

7. The application was opposed by the plaintiff. It is averred that the suit was not defended at all and the proceedings were prosecuted in a lackadaisical manner. The plaintiff – non-applicant has alleged negligence and lack of diligence on the part of the

defendant. It is also asserted that the defendant is charging its counsel for its own omission; plaintiff also contends that defendant has stepped forward to prosecute the proceeding after a period of nine years. The plaintiff further avers that no amount was attached from the account of the defendant because the account pertained to cash credit and nothing was payable to the defendant, by the Bank. Further, the plaintiff alleges that Mr.Sandeep Soni, Liaison officer of the defendant was present in Court on 6.12.1996 and, therefore, the defendant was aware of the next date of hearing and of all other proceedings.

8. Counsel for the applicant in addition to the averments relied upon the judgment of the Supreme Court in ***M.K.PRASAD vs. P.ARUMUGAM***, (2001) 6 SCC 176 stating that lack of vigilance on the part of the litigant should not be seen outside the context of the fact that he engages a counsel and the latter's inability to prosecute the proceeding should not severely visit the litigant with adverse consequences. The Court further held that while considering the provisions of Section 5 of Limitation Act, it is relevant to bear in mind certain important considerations, i.e. expiration of the period of limitation prescribed results in the decree becoming binding and consequently if sufficient cause for condoning the delay is found, the Court has a discretion to condone such delay.

9. From the above narrative, it is abundantly clear that the defendant was unrepresented since 6.2.1997. The decree was made on 29.10.2003. The application for seeing it aside and condoning the delay was made on 7.4.2005. The defendant claims to be in dark and consequently, blames its counsel for not informing it about the pendency of the proceedings and the further steps required to be taken. It is also contended that its liaison officer, Mr.Sandeep Soni, had also left the employment of the defendant. The other contention raised that the defendant shifted its office from Bhikaji Cama Place to its present address at Kalkaji.

10. This Court was constrained to set down the defendant ex-parte on 6.2.1997 on account of its omissions and its being unrepresented. More than six years went by and the defendant neither chose to appear at any subsequent stage and have the said order recalled or participate in further stages of the proceeding as it was entitled to in law. It has raised two distinct grounds for condoning the delay and setting aside the decree. The first is that its counsel did not inform it and also that its representative Mr.Sandeep Soni left its employment. No details as to when the said Mr.Soni left the employment have been furnished by the applicant. Equally, the defendant has nowhere stated as to the steps ever taken by it during the interregnum period till the date it became aware of the decree, as

to inform itself about the progress of the case from its counsel.

11. When a litigant approaches the counsel and gives him instructions to appear on its behalf, there is no doubt that it expects its counsel to represent it as long as its instructions to do so remain. However, equally, a litigant also has to be diligent in prosecuting its case and seeking information from its counsel from time to time. No attempt was made during the six or seven year period after 1997, in this regard. No material was shown that the applicant, a Company, ever took steps to keep track of the proceeding. In these circumstances, it is difficult for the Court to accept the explanation that the defendant's counsel was not prosecuting the case on its behalf diligently or committed some negligence. This allegation appears to be made merely to get out of a difficult situation. As far as the second issue, i.e. whether the defendant shifted its premises, is concerned, apart from the letter written by the Ahmedabad Stock Exchange and the notice published in the newspaper regarding holding of the Annual General Meeting, no further material has been placed on record. Further, even if this plea were accepted, the shifting of an office and its communication is purely an internal matter between the litigant, i.e. the defendant and its counsel. In this regard too, no attempt was made to explain whether such change of address was communicated to its counsel and if so, when.

12. In the circumstances of this case, the Court is not persuaded to accept the version presented by the defendant about its delay in approaching the Court. The grounds urged in support of the applications are insubstantial. Although, in this case, the decree was made on 29.10.2003, it was preceded by an order dated 6.2.1997 where the defendant was set down an ex-parte.

13. In the circumstances, the defendant -applicant has not made out sufficient cause for condoning the delay or even seeking the relief under Order 9 Rule 13 CPC on its merits. All the pending applications of the defendants are, therefore, dismissed.

MARCH 25, 2008
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S. RAVINDRA BHAT,J