

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.253/2007**

% *Reserved On: 18.11.2010*
Decided On:23.11.2010

M/S GODREJ HI CARE LTD. Appellant
Through: Mr.Rajiv Tyagi and Mr.Ram Manohar
Singh, Advocates

Versus

M/S R.N. CHADHA & CO. & ANR. Respondents
Through: Mr.Amit Gupta, Advocate for the
respondent.
Mr.Nawal Kishore Jha, Advocate for
GNCTD

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

: MOOL CHAND GARG, J.

1. This appeal arises out of an order dated 09.04.2007 passed by the Additional District Judge in Suit No.295/2003, whereby the learned Judge has dismissed the application filed by the appellant for condoning the delay in filing an application for restoration of the suit which was dismissed in default on 14.12.2005.

2. The learned Additional District Judge after examining the matter dismissed the application for condonation of delay in filing an application for restoration of the suit on the following grounds:-

“.....Firstly, on 14.12.2005 none appeared on behalf of plaintiff despite repeated calls and the suit of the plaintiff was dismissed for non-prosecution at 2:15 pm. On that date the case was fixed for plaintiff's evidence. It is pertinent to note that no affidavit in plaintiff evidence was filed nor any witness was called/present.

Secondly, subsequently an application u/o 9 rule 9 CPC was filed for restoration of the suit. The same was taken up on 03.02.2006. Since none was present on behalf of plaintiff/applicant the application u/o 9 rule 9 CPC was dismissed.

Thirdly, thereafter the present application has been filed almost more than one year after dismissal of application of plaintiff u/o 9 Rule 9 for non appearance stating that the case was handled by a firm of lawyers who could not take care of the case and due to their negligence the suit as well as application was dismissed. It is stated that the negligence of a counsel is a ground for condonation of delay and accordingly cite **AIR 1970 SC 1953, (1979) 4 SCC 365 and (2002) 4 SCC 458.**

Usually courts are very liberal in condoning the delay in filing the applications. The plaintiff/applicant should give the facts and the reasons for condonation. I do not think that the applicant has given the reasons for the delay.

Fourthly, since middle of 2005 the cause lists are available on the internet and anyone can see his case on internet by just clicking of mouse. Plaintiff company that have so many paraphernalia could not say that it was ignorant of the date. Any time the company can check with the internet the status of their case. For knowing date of hearing there is no need to depend on advice of counsel. Even short and final order are available on internet which can be checked by plaintiff/applicant. It is just not a mistake of the counsel but rather a negligence on the part of the plaintiff company which could not be condoned.

Accordingly there is no merit in the application of plaintiff/applicant u/s 151 CPC and the same is dismissed.”

3. The learned counsel appearing for the appellant assailing the aforesaid order, has submitted that the appellant/plaintiff who filed the suit for recovery of ₹ 6,01,627.80 against the respondents on account of supply of various goods had engaged a firm of lawyers to attend their case and on account of that firm of lawyers the suit was dismissed in default probably on account of lawyer's strike. It is submitted that the client should not suffer because of the negligence of his lawyer and therefore, the Additional District Judge ought to have condoned the delay and allowed the application under Order IX Rule 9 & 4 r/w Section 151 CPC for restoration of the suit.

4. To appreciate the submission of learned counsel for the appellant and the conduct of the appellant it would be appropriate to take note of the sequence of events which transpired in this case:-

Date	Events
14.12.2005	The suit filed by the appellant was dismissed in default on 14.12.2005, on which date the case was listed for recording plaintiff's evidence.
03.02.2006	The application under Order IX Rule 9 CPC r/w Section 151 CPC filed by the appellant for setting aside the order dated 14.12.2005 and for restoration of the suit to its original number was dismissed in default.
02.04.2006	Another application under Order IX Rule 4 r/w Section 151 CPC was filed for restoration of application under order IX Rule 9 r/w Section 151 CPC. The same was dismissed in default although there is no formal order on the file of the learned Trial Court but merely a noting on the application itself.
August 2006	The earlier firm of lawyers representing the appellant was disengaged and a new firm was engaged.
22.2.2007	New counsel engaged inspected the record on 22.2.2007.
2.4.2007	An Application filed under Order IX Rule 4 & 9 r/w Section 151 CPC for recall of order dated 14.12.2005 and for restoration of the suit along with an application for condonation of delay came up for hearing before the learned Trial court.
09.04.2007	The aforesaid application was dismissed.
03.07.2007	Against the order dated 09.04.2007, the appellant filed the present file.

5. It has been submitted that the order in question has been passed by the learned ADJ without appreciating the peculiar facts of this case and plethora of judicial proceedings cited at bar as also without going through the written submissions. It has also been submitted that the order ought to have passed by the court below after applying its mind taking into consideration the pronouncement of the Apex Court that for mistake of counsel the party should not suffer. The trial court ought to have taken into consideration the negligence and reckless conduct of the erstwhile counsel which led to the termination of services of earlier counsel. Even the case files were not returned to the appellant by their earlier counsel and the present counsel had to toil hard in registry of

the court below to track down the case file. It is stated that the reasons have been given by the appellant but these have not been appreciated by the trial court in the right essence.

6. Taking note of the conduct of the appellant and his counsel including the counsel who was appointed after removal of the first counsel in August, 2006, & the manner in which the new counsel has conducted himself right from August 2006 which shows his utter negligence also which resulted in dismissal of various applications filed even later thrice, leaves no room for doubt that the appellant has no interest in the prosecution of the suit. There is no explanation as to why despite bad experience of the earlier counsel, the appellant did not appoint an authorized representative to appear in the Court on each and every date of hearing so as to ensure that the interest of the appellant is taken care of.

7. I have gone through the written submissions filed on behalf of the appellant and have also considered the judgments delivered by the Apex Court in the following cases:-

(i) Lala Mata Din Vs. A.Narayanan, (1969) 2 SCC 770;

(ii) Concord of India Insurance Co. Ltd. Vs. Nirmala Devi, (1979) 4 SCC 365; and,

(iii) Municipal Corporation Vs. Ramacharan, (2002) 4 SCC 458.

8. A perusal of these judgments goes to show that even though the Apex Court has always been holding that mistake of counsel made in certain circumstances is a ground for condoning the delay but at the same time it has also been held that it is not a general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way.

9. Applying the ratio of the aforesaid judgments cited at bar to the facts of this case which shows utter negligence not only on the part of the appellant but also on the part of the earlier counsel and his second

counsel and considering the manner in which the learned Additional District Judge has disposed of the application for condonation of delay in filing an application under Order IX Rule 4 & 9 for restoration of suit, I am of the view that there is nothing which calls for an interference by this Court in this matter. According, the appeal is dismissed with no orders as to costs. Trial court record, if any, be sent back forthwith along with a copy of this order.

MOOL CHAND GARG, J

NOVEMBER 23, 2010

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