

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ C.R.P. 118/2009

Decided on 08.03.2010

IN THE MATTER OF :

ARIZONA PRINTERS & PACKERS LTD. AND ANR. Petitioners
Through: Mr. Rajesh Malhotra, Advocate

versus

STATE BANK OF PATIALA AND ANR. Respondents
Through: Mr. Shiv K. Tyagi, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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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 |

HIMA KOHLI, J. (Oral)

1. Vide order dated 24.08.2009, notice was issued in the present petition, limited to the aspect of enhancement of costs payable by the respondents, as ordered by the learned Additional District Judge on 03.07.2009, while allowing the application preferred by the respondent No.1/Bank (defendant No.2 in the suit filed by the petitioner), under Section 5 of the Limitation Act, seeking condonation of delay of approximately 4 years in filing an application under Order

IX Rule 13 CPC, for setting aside an *ex-parte* judgment and decree dated 24.08.2006.

2. While issuing notice on 24.08.2009, the court examined the impugned judgment at length and held that it did not deserve any interference except for the aspect of costs of Rs.5,000/- imposed on the respondent/Bank by the trial court, while allowing its application, in view of the negligence on its part as brought out in the impugned order. Pertinently, the order dated 24.08.2009 was challenged by the petitioner, by filing an appeal before the Supreme Court. However, the said appeal was dismissed and hence, the said order has attained finality.

3. On the last date of hearing, appearance was entered by respondent No.1 and the counsel for respondent No.1/Bank had sought time to address arguments. While adjourning the matter for today, he was directed to inform the Court as to whether the costs of Rs.5,000/- imposed by the impugned order dated 03.07.2009 had been tendered to the petitioner. Today, it is stated by the counsel for the respondent No.1/Bank that the costs were tendered only on 12.10.2009, and the same were not accepted by the counsel for the petitioner on the ground that the present revision petition had been filed by it.

4. A perusal of the impugned order dated 03.07.2009 shows that the pending application of the respondent/Bank filed under Order

IX Rule 13 CPC seeking setting aside of the *ex-parte* decree was directed to be listed on 25.07.2009. On 25.07.2009, at the joint request of the counsels for the parties, the matter was adjourned to 24.08.2009. However, the costs were not tendered by the respondent No.1/Bank on the said date. It is not disputed by the counsels for the parties that further dates were fixed in the application, but the costs were tendered by the respondent/Bank only on 12.10.2009. Ideally speaking, the application filed by the respondent under Order IX Rule 13 CPC could not be considered by the court below in view of the fact that the order dated 03.07.2009 was a conditional order and the delay in filing the application was condoned, subject to payment of costs of Rs.5,000/- by the respondent/Bank. Assuming that there was no timeline fixed for paying the costs, the payment ought to have been made by the respondent No.1/Bank within a reasonable time of 3-4 weeks. However, the costs came to be tendered after over three months, only in October, 2009 which can, by no stretch of imagination, be termed as a reasonable time for compliance of the impugned order.

5. As far as the aspect of quantum of costs is concerned, on which notice was issued in the present petition, the facts reveal that the respondent No.1/Bank was proceeded against *ex-parte* vide order dated 20.07.2004. The *ex-parte* decree came to be passed after about two years, on 24.08.2006. The petitioner/plaintiff filed an execution

petition against the judgment debtors including respondent No.1/Bank on 18.07.2008. The respondent No.1/Bank filed an application under Order IX Rule 13 CPC, seeking setting aside of the *ex-parte* judgment and decree, supported by an application under Section 5 of the Limitation Act, for condonation of delay of approximately four years in preferring the said application, which was filed on 08.10.2008. It is, therefore, quite clear that there was delay of approximately four years on the part of the respondent No.1/Bank in approaching the trial court for setting aside of the *ex-parte* judgment and decree passed against it.

6. Counsel for the respondent No.1/Bank submits that the contention of the counsel for the petitioner that the letter dated 22.01.2007 sent by the petitioner to the respondent No.1/Bank, intimating it about the *ex-parte* judgment and decree, was never received by the respondent No.1/Bank and hence, it was unaware of the *ex-parte* judgment and decree. It is further stated that there was no communication between the Bank and its counsel during the period w.e.f. 20.07.2004, when it was proceeded against *ex-parte*, and till it received a copy of the warrant of attachment application.

7. The lack of communication between the client and the counsel was a ground, which was duly considered not only by the court below but also in the present proceedings on 24.08.2009. But while balancing equities, it is necessary to keep in mind the fact that a delay

of four long years has been caused in the conduct of the trial of the suit of the petitioner, purely for the fault which squarely lies at the door of the respondent/Bank. Much emphasis has been laid by the counsel for the respondent/Bank on the fact that the respondent No.1/Bank is a public sector undertaking. That the respondent No.1 is a public sector undertaking only means that a heavier onus rests on its shoulder not only to conduct itself with probity in its public dealings, but also to conduct itself with a greater sense of responsibility in all other spheres, including litigation pending in courts. At the same time, the Court cannot lose sight of the fact that the respondent No.1 being a public sector bank, is dealing with public funds and any further costs imposed on it will result in indirectly taxing the public for a fault which is actually attributable to a lackadaisical approach of the concerned officers of the respondent/Bank dealing with the case in hand.

8. In this view of the matter, over and above the costs of Rs.5,000/- imposed by the impugned order, the respondent No.1/Bank shall pay additional costs of Rs.5,000/- to the petitioner, which amount shall be recovered by the respondent No.1/Bank from the defaulting officers after an inquiry in that regard is held by the Chief Manager of the Bank. Proof of recovery of the balance costs from the concerned officers shall be placed on the record of the trial court alongwith an affidavit of the Chief Manager of the respondent No.1/Bank. The

costs imposed by the impugned order dated 03.07.2009 and those imposed by this Court shall be paid to the petitioner through counsel, within two weeks from today.

9. The revision petition is disposed of.

MARCH 8, 2010
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(HIMA KOHLI)
JUDGE