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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 16, 2010

Date of Order: March 02, 2010

+ CM(M) 1536/2007

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Ishwar Industries Limited

Through: Mr. Amit Sethi, Advocate

02.03.2010

...Petitioner

Versus

Nulon India Limited

Through: Mr. C.P. Vig, Advocate

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 5th November 2007 passed by learned trial court whereby an application of the petitioner under Order XLI Rule 3 A CPC read with Section 5 of Limitation Act for condonation of delay of 460 days in filing the appeal was dismissed.

2. The petitioner had suffered an ex parte judgment and decree dated 30th October 2005. This ex parte judgment and decree was suffered by the petitioner deliberately since the petitioner was not only served summons of the suit but petitioner made an application under Order I Rule 10 CPC before the Civil Judge making averments therein that he was not a necessary party in the suit and the petitioner's name should be dropped from the array of parties. This application of the petitioner was dismissed by the Civil Judge. After dismissal of this application, the petitioner did not contest the suit and the suit was decreed ex parte. The petitioner preferred an appeal against the judgment and decree with a delay of 460 days. The grounds stated in the application for condonation of delay were that the petitioner had no knowledge of being proceeded ex parte and he had no means to discover the fate of the suit proceedings as no notice was received from the court or from the respondent about the suit having been decreed. The petitioner all along was under the impression that the other defendant namely Growth Technical Pvt. Ltd would settle the matter with the plaintiff, but the other defendants colluded with the plaintiff and the decree was passed at the back of the petitioner.

3. The first Appellate Court found that the ground given by the petitioner for condonation of delay in filing the appeal were actually no grounds in the eyes of law as the petitioner was duly served and he moved an application under Order 1 Rule 10 CPC. He chose not to file the written statement and not to contest the suit. Nobody was supposed to inform him about the outcome of the suit. The plea of the petitioner that the petitioner was under the impression that the other defendant namely M/s Growth Technical Pvt. Ltd. would take care of the interest of the petitioner was also found false since there was a clash of interest between the petitioner and M/s Growth Technical Pvt. Ltd who were opposite parties to the arbitration proceedings pending before Justice P.K. Bari.

4. It is submitted by counsel for petitioner that the respondent had filed three other suits of similar nature against the petitioner and these suits were dismissed. This was the fourth suit. The petitioner was given wrong advice by the counsel to move an application under Order 1 Rule 10 CPC and due to this wrong advice, he did not appear in the case and, therefore, did not come to know the result of the suit and suffered the decree.

5. Even if the plea of the petitioner is believed that the petitioner was given wrong advice of moving an application under Order 1 Rule 10 CPC, the fact remains that this application of the petitioner was dismissed by the learned Civil Judge and the Civil Judge observed that the petitioner was a necessary party. Thereafter, the petitioner was supposed to contest the suit. Once the petitioner deliberately did not contest the suit and allowed the suit to be decreed and thereafter did not file the appeal within the statutory period of limitation and filed appeal after 460 days, I consider that there can be no justifiable grounds for condonation of delay. It is a case of sleeping over the matter deliberately and not contesting the case before the trial court and then filing an appeal after 460 days delay.

6. I find no force in this petition. The petition is hereby dismissed. No orders as to costs.

March 02, 2010
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SHIV NARAYAN DHINGRA J.