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IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA 59/2009

Judgment Delivered on: 02.11.2010

M/S SAMBHAV INDUSTRIES

..... Appellant

Through: Mr.Amit Bhardwaj, Advocate.

versus

OSWAL CABLE PRODUCTS

..... Respondent

Through: None for the respondent.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Despite service, none was present on behalf of the respondent at first call. None is present even now at the second call.
2. Present appeal is directed against the judgment and decree dated 16.09.2008. The facts necessary for disposal of the appeal are that respondent herein had instituted a suit under the provisions of Order 37 of the CPC against the appellant herein for recovery of ₹3,08,181.78 with respect to supplies having been made by the respondent to the appellant herein as per various invoices / bills which were duly received and acknowledged by the appellants. As per the plaint, parties were maintaining running account and for the period ending 31.03.2007 a sum of ₹3,02,139/- was outstanding with respect

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31.03.2007. The respondent had issued a legal notice dated 03.08.2007, calling upon the appellant herein to make the payment, failing which the appellant would be liable to pay interest @ 24% per annum, on the outstanding amounts. As per the plaint the appellant failed to respond to the legal notice dated 03.08.2007, nor were the amounts cleared which led to filing of the suit.

3. Summons in the suit were served on the appellant on 05.11.2007, however, the appellant failed to put in appearance within the prescribed period of ten days of service and memo of appearance was filed only on 12.12.2007. The trial court thereafter was passed a decree on 16.09.2008. The appellant thereafter filed an application under Section 37 Rule 3(5) CPC wherein it was stated that the summons were received by them only on 05.12.2007, however, as per the respondents, the summons were served on 05.11.2007 by the registered AD post, which were received and the acknowledgement was signed by the guard, namely, Sanjay Singh. According to the appellant, there is no guard in the name of Sanjay Singh on the rolls of the company. Copy of the attendance register has been filed. After hearing, the trial court dismissed the aforesaid application which has led to the filing of the present appeal. Despite service none for the respondent to oppose the appeal.
4. In the order dated 16.09.2008, the trial court has noticed that the defendant (appellant herein) was served with the summons on 05.11.2007 and the defendant was supposed to put in

appearance within 10 days thereafter, while the defendant has put in appearance only on 12.12.2007. As per the appellant, the appellant was served with a copy of the summons only on 12.12.2007 and accordingly appearance was put in within the period prescribed. Without expressing any opinion as to whether the appellant was served through Sanjay Singh, security guard or not. Having regard to the fact that even assuming that appellant was served on 05.11.2007 and that the memo of appearance was filed on 12.12.2007, I deem this to be a fit case to condone 28 days delay in filing the memo of appearance.

5. In **Asha Sharma & Ors. Vs. Sanimiya Vanijiya (P) Ltd. & Ors.** reported in 162 (1009) DLT 542, a Division Bench of this Hon'ble Court observed:

"It is trite law that rules of procedure being hand-mades of justice, a party should not be refused relief merely because of some mistakes, negligence or inadvertence. Rules of procedure are designed to facilitate justice and further its ends."

6. The legislature prescribes limitation not with the object of destroying the rights of the parties, but to ensure that the parties do not resort to dilatory tactics and seek remedy without delay. It is also well accepted that as against a pedantic and technical approach of throwing out a party on grounds of delay and laches, ends of justice are better met by rendering a decision on merits. But it also cannot be said that the negligence or carelessness of a party be not met with any

consequences. Thus the defendant (appellant herein) must be mulcted with costs so as to ensure compliance with the rules of procedure.

7. The delay is condoned subject to payment of costs of ₹7,500/- to be paid to the respondent. Let the memo of appearance be taken on record. Let the appellant file its application for summons for judgment in accordance with law.


G.S. SISTANI, J.

November 02, 2010

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