

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

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**Date of decision: 3<sup>rd</sup> January, 2014**

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**RFA No.568/2013**

**CHAMELEON RESOURCES LTD.**

**..... Appellant**

Through: Mr. Rajesh Kumar & Mr. S.  
Shekhar, Advs.

Versus

**TATA TEA LTD.**

**..... Respondent**

Through: None.

***CORAM:-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J**

1. The appeal impugns the judgment and decree dated 03.03.2010 of the Court of the Additional District Judge (ADJ), Central-14, Delhi of dismissal (for the reason of the appellant / plaintiff having failed to lead any evidence in support of its claim) of suit No.1009/2008 filed by the appellant / plaintiff for recovery of damages of US\$31883.00 equivalent to Indian Rs.12,11,535/- with interest.

2. The appeal, though accompanied with applications for condonation of 1182 days delay in filing and 60 days delay in re-filing the appeal, when filed was without the requisite court fees. Eight weeks time was sought to make up the deficiency in court fees. The appeal came up first before this

Court on 06.12.2013 when finding no justification for seeking long time of eight weeks to pay the court fees and further finding the appellant / plaintiff to be having a history of not only taking wrong legal steps but also of delaying the matter, one week's time was given for payment of court fees.

3. Court fees is reported to have been paid and the counsel for the appellant / plaintiff was heard on admission on 17.12.2013. In the absence of evidence, the suit of the appellant / plaintiff could not have been decreed especially when the onus of the issues framed was on the appellant / plaintiff. The only question thus for consideration in the appeal was whether the appellant / plaintiff was given ample opportunity to lead evidence or not. The counsel for the appellant / plaintiff however in the memorandum of appeal did not set out any facts in this regard. During the hearing also, he could not tell as to how many opportunities for leading evidence had been granted to the appellant / plaintiff. In fact, the copies of the order sheets in the suit were also not available with the counsel. In the circumstances, the Trial Court record was requisitioned and order on admission reserved. The Trial Court record has been received.

4. A perusal of the Trial Court record shows, the suit from which this appeal arises, to have been instituted as far back as on 20.10.2000, in this

Court and which, on change of pecuniary jurisdictions in the year 2003 was transferred to the District Court. Issues were framed in the suit on 23.02.2005, with the onus of the main / material issues being on the appellant / plaintiff. The suit was adjourned to 20.04.2005 for evidence of the appellant / plaintiff with a direction to the appellant / plaintiff to file list of witnesses along with the affidavits of the witnesses sought to be examined with advance copy to the respondent / defendant.

5. Neither any list of witnesses nor any affidavits by way of examination-in-chief were filed. The suit, on 20.04.2005 was adjourned to 26.05.2006 and thereafter to 08.08.2005, when last opportunity was granted to the appellant / plaintiff for its evidence subject to deposit of costs of Rs.3,000/- with Delhi Legal Services Authority (DLSA) and the suit adjourned to 04.10.2005. It was further specified that long date had been given with the clear understanding that no further opportunity shall be granted.

6. On 04.10.2005, the appellant / plaintiff filed an application for review of the earlier order dated 08.08.2005, along with an affidavit of one of its witnesses. The witness however was not present in the Court and was stated to be in England and likely to be in India in the month of November, 2005.

The application for review of the order dated 08.08.2005 was dismissed and yet another opportunity was given to the appellant / plaintiff to produce its witness subject to payment of further costs of Rs.5,000/- together with earlier costs of Rs.3,000/- to the DLSA. A Court Commissioner was also appointed to record the cross examination of the witness of the appellant / plaintiff on 19.11.2005.

7. The witness of the appellant did not appear before the Court Commissioner and an application for review of the order dated 04.10.2005 was filed and the suit adjourned thereon on 02.12.2005, 02.02.2006, 27.02.2006, 10.07.2006, 08.08.2006, 06.09.2006, 21.09.2006, 26.09.2006, 17.10.2006, 27.11.2006, 15.01.2007, 17.01.2007, 20.02.2007 and 09.04.2007.

8. On 16.04.2007 the appellant / plaintiff sought time to move an application for recording of the evidence of its witness via video-conferencing. Though 15 days time was granted to file the said application but the application was filed beyond the said period, on 19.05.2007 and the suit adjourned on the basis of the said application on 21.05.2007, 08.08.2007, 11.09.2007 and 31.10.2007.

9. On 28.11.2007, it was discovered that the appellant / plaintiff had not deposited the costs earlier imposed with the DLSA. An opportunity therefor was granted.

10. Vide order dated 19.03.2008, the application of the appellant / plaintiff for examination of its witness by video-conferencing was disposed of and the suit adjourned to 25.04.2008 for recording of the evidence of the said witness before the Court Commissioner earlier appointed.

11. The witness of the appellant / plaintiff again failed to appear before the Court Commissioner. Thereafter, an application for review of the order declining the request for examination of the witness by video-conferencing was filed and the suit adjourned from time to time on the said application. The said application was finally dismissed on 10.12.2009 and the suit posted for evidence of the respondent / defendant. The respondent / defendant, in the absence of any evidence of the appellant / plaintiff, chose not to lead any evidence and finding that the appellant / plaintiff had not led any evidence in support of its claim, the suit was vide impugned judgment dismissed.

12. The aforesaid narrative will show that the suit remained pending for recording evidence of the appellant / plaintiff from 20.04.2005 till its dismissal in the year 2010 i.e. for over five years. I fail to see as to how the

said five years can be said to be not an ample opportunity to the appellant / plaintiff for producing its witness. Not only so, after the dismissal of the suit on 03.03.2010, the appellant / plaintiff instead of filing this appeal, on 30.11.2010 filed CM(M) No.42/2011 in this Court challenging the order of dismissal of its application for examination of its witness via video-conferencing. The said remedy also was taken after more than seven months of the dismissal of the suit.

13. The aforesaid remedy itself was palpably misconceived after the suit itself had been dismissed. The said CM(M) petition was dismissed on 25.01.2012 holding the same to be an abuse of the process of the Court and with costs quantified at Rs.10,000/-.

14. The appellant thereafter preferred SLP(C) No.25966-67/2012 and which was also dismissed on 15.07.2013. This appeal has been filed only on 13.09.2013. Even at that time no urgency was shown.

15. The aforesaid shows the entire action of the appellant / plaintiff to be misguided and intended just to keep the proceeding alive, without the appellant / plaintiff really being interested in a decision on its claim. Though the appellant / plaintiff is itself to blame for the present lis having remained pending for the last nearly 13 years, without the appellant /

plaintiff taking any effective steps therein but it is often the Courts which are blamed for such delays.

16. No error is found in the impugned judgment and orders of the learned ADJ closing the evidence of the appellant / plaintiff and resultantly in the absence of any evidence, dismissing the claim of the appellant / plaintiff.

17. The appeal is without any merit and is dismissed *in limine*. I refrain from imposing any costs on the appellant / plaintiff though a clear case therefor is made out as the appellant / plaintiff is found to be wasting the time of the Court.

Decree sheet be prepared.

**RAJIV SAHAI ENDLAW, J**

**JANUARY 03, 2014**

‘gsr’..