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

% ***Date of decision: 22nd March, 2024***

+ **CS(OS) 660/2017**

TUMLARE SOFTWARE SERVICES PRIVATE LIMITED

..... Plaintiff

Through: Mr. Ajay Bhargava, Mr. Arvind
Kumar Ray, Mr. Tridib Bose & Ms.
Divya Singh Yadav, Advocates.

versus

MR. ANURAG MAHAJAN & OTHERS

..... Defendants

Through: Mr. Ankit Rana, Advocate.

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+ **CS(OS) 662/2017**

TUMLARE TRAVELS PRIVATE LIMITED

..... Plaintiff

Through: Mr. Ajay Bhargava, Mr. Arvind
Kumar Ray, Mr. Tridib Bose & Ms.
Divya Singh Yadav, Advocates.

versus

MR. ANURAG MAHAJAN & OTHERS

..... Defendants

Through: Mr. Ankit Rana, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 5286/2022 (u/O IX Rule 13 by D-1 for setting aside Judgment/Decree dated 15.11.2019) in CS(OS) 660/2017

I.A. 5288/2022 (u/S 5 of Limitation Act, 1963 by D-1 for condonation of 89



days' delay in filing I.A. 5286/2022) in CS(OS) 660/2017

I.A. 5289/2022 (u/O IX Rule 13 by D-1 for setting aside Judgment/Decree dated 15.11.2019) in CS(OS) 662/2017

I.A. 5291/2022 (u/S 5 of Limitation Act, 1963 by D-1 for condonation of 89 days' delay in filing I.A. 5289/2022) in CS(OS) 662/2017

1. By way of present applications, the applicant/defendant No. 1/Anurag Mahajan impugns the Judgment/Decree dated 15.11.2019 and seeks condonation of 89 days' delay in filing the Applications under Order IX Rule 13 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*).
2. Briefly stated, the plaintiff has filed the present *Suits for Recovery* of Rs. 5,37,51,906/- and Rs. 7,42,23,500/- along with interest @ 18% per annum and Mandatory Injunction, respectively.
3. The Summons of the Suits was issued *vide* Order dated 11.12.2017.
4. The applicant/defendant No. 1/Anurag Mahajan was duly served with the Summons through his wife/Ms. Anu Mahajan (who is the defendant No. 2 in the present Suits) on 20.01.2018.
5. The applicant/defendant No. 1/Anurag Mahajan entered appearance in the Court on 27.02.2018 and thereafter, the applicant/defendant No. 1/Anurag Mahajan failed to file the Written Statement within the statutory period.
6. Pertinently, no Written Statements were filed on behalf of the defendants and their right to file the Written Statements was closed *vide* Order dated 13.11.2019. Eventually, both the Suits were decreed *vide* Judgment/Decree dated 15.11.2019.
7. The applicant/defendant No. 1 has asserted that he had engaged Mr.



Vineet Malhotra, Advocate as his counsel. Mr. Vineet Malhotra and his associates were previously appearing for defendant Nos. 2 and 3 and therefore, the same Counsel Mr. Vineet Malhotra, Advocate was also engaged by the applicant/defendant No. 1. who assured that he would prepare the defence and file the Written Statement on his behalf within the stipulated time.

8. The applicant/defendant No. 1 has claimed that for the purpose of preparing the Written Statement, he had couple of meetings with Mr. Vineet Malhotra. Subsequently, when the applicant/defendant No. 1 enquired about it on couple of occasions, he was assured by the counsel that he is in the process of preparation of the Written Statement. Believing the version of the Advocate to be correct, the applicant/defendant No. 1 was rest assured that the requisite reply shall be filed within the stipulated time and the interest of applicant/defendant No. 1 shall be protected.

9. The applicant/defendant No. 1 has further claimed that Mr. Vineet Malhotra, in complete dereliction of his duty and going beyond all the boundaries of professional ethics, deceived him and never filed the Written Statement as a consequence of which he had to suffer the ex-parte Judgment/Decree dated 15.11.2019.

10. It is claimed on behalf of the applicant/defendant No. 1 that on 15.11.2019, no one appeared on his behalf and in the evening, he was told by his counsel that the Suits had been decreed against him. When the applicant/defendant No. 1 demanded the copy of the Judgment/Decree dated 15.11.2019, he was informed that the copy of the Judgment/Decree dated 15.11.2019 shall be uploaded on the website within a couple of days and they would be applying for certified copy of the same. The certified copy of



the Judgment/Decree was applied on 30.11.2019 which was received somewhere in first week of March, 2020. The applicant/defendant No. 1 thought of advising his counsel to file an Appeal against the Judgment/Decree dated 15.11.2019, but on account of COVID-19 Pandemic outbreak, the entire functioning of the Court came to a standstill. During the partial lifting of the lockdown restrictions, the applicant/defendant No. 1 tried to reach his counsel, but he was not entertained.

11. It is asserted that the applicant/defendant No. 1 has already filed a complaint against his Advocate, Mr. Vineet Malhotra for his professional misconduct before the Bar Council of Delhi and would ensure that stern action is taken against the erring counsel. It is submitted on behalf of the applicant/defendant No. 1 that there are catena of judgments which state that no litigant should be made to suffer for the negligence of the counsel.

12. It is submitted that for the afore-stated reasons, the Judgment/Decree dated 15.11.2019 be set aside.

13. The *Applications under Section 5 of the Limitation Act, 1963* seeking condonation of 89 days' in filing the Applications under Order IX Rule 13 of CPC, 1908, have also been filed wherein the applicant/defendant No. 1 has submitted that he received the information about the impugned Judgment/Decree dated 15.11.2019 on the same day itself and the certified copy of the Judgment/Decree became available in the first week of March, 2020. Because of the COVID-19 outbreak and for the same reasons stated above, the delay in filing the Applications under Order IX Rule 13 of CPC, 1908 be condoned.

14. **The plaintiff in its Reply** has refuted the averments contained in the Applications under Order IX Rule 13 of CPC, 1908 and Section 5 Limitation



Act, 1963.

15. It is submitted that the applicant/defendant No. 1 is wrongly claiming the delay to be of 89 days, and the applications are claimed to be misconceived.

16. The applicant/defendant No. 1 admittedly gained knowledge of passing of the Judgment/Decree dated 15.11.2019 on the same day of its pronouncement. Article 123 of the Limitation Act, 1963 provides the period of 30 days for filing an Application under Order IX Rule 13 of CPC, 1908 which expired on 15.12.2019. Thereafter, there is a delay of 842 days and not 89 days as is claimed by the applicant/defendant No. 1, in his applications.

17. It is further submitted that the applicant/defendant No. 1 has asserted that the delay occurred because of obtaining the certified copy which was applied on 15.11.2019 and the same was made available in March, 2020. However, this explanation is not tenable, since the alleged certified copy of the Judgment/Decree dated 15.11.2019 has not been placed on record, to corroborate these assertions. Further, there is no evidence that any such certified copy of the Judgment/Decree was, in fact, obtained. In the absence of the certified copy of the Judgment/Decree, the delay in filing the Applications under IX Rule 13 of CPC, 1908 is not explicable.

18. Furthermore, the plaintiff has countered the claim of the applicant/defendant No. 1 that it took him more than three months from November, 2019 till March, 2020 to get the certified copy of the Judgment/Decree dated 15.11.2019 by asserting that it had applied for the certified copy of the Judgment/Decree on 22.11.2019 and got the same on 11.01.2020. The assertions of the applicant/defendant No. 1 that it took him



about three months to get the certified copy of the Judgment/Decree is, therefore, not believable.

19. The plaintiff has further submitted that the Supreme Court in Suo Moto Writ Petition (C) 3/2020, merely excluded the period from 15.03.2020 till 28.02.2022 for the purpose of calculating the limitation under general and special laws.

20. In the present case, the limitation stood expired much prior to 15.03.2020 and, therefore, the Judgment of the Supreme Court is of no assistance to the applicant/defendant No. 1 to claim extension of the limitation period.

21. The plaintiff has further submitted that the applicant/defendant No. 1 has failed to show any steps taken since November, 2019 to constitute sufficient cause leading to delay in filing the present Applications under Order IX Rule 13 of CPC, 1908.

22. Furthermore, the complaint was filed by the applicant/defendant No. 1 against his counsel in February, 2022 i.e., after 15 months of passing of the Judgment/Decree dated 15.11.2019. It is submitted that in the aforesaid circumstances, there is no ground made out for condoning the delay by the applicant/defendant No. 1 and for the same reasons, there is no reason given to set aside the Judgment/Decree dated 15.11.2019 passed against the applicant/defendant No. 1.

23. **Submissions heard.**

24. The perusal of the record shows that the present Suits were filed on 01.12.2017 and the applicant/defendant No. 1/Anurag Mahajan was duly served with the Summons through his wife/Ms. Anu Mahajan (who is the defendant No. 2 in the present Suits), on 20.01.2018. The



applicant/defendant No. 1 entered his appearance on 27.02.2018. The applicant/defendant No. 1 had the time for filing his Written Statement from the date of service i.e., 20.01.2018 till 19.02.2018 and even if the benefit of balance 90 days is given, then the Written Statement should have been filed on behalf of the applicant/defendant No. 1 till 19.05.2018. However, no Written Statement whatsoever got to be filed on behalf of the applicant/defendant No. 1.

25. The applicant/defendant No. 1 as per his own admissions, had been duly served on 20.01.2018 and also as per his own submissions, he also engaged an Advocate. The applicant/defendant No. 1 himself submits that he had couple of meetings with his Advocate for preparation of the Written Statement, but he was assured subsequently that the counsel would do the needful. The applicant/defendant No. 1 thus, was fully aware that the Written Statement was required to be filed but he maintained stoic silence till filing of the present Applications under Order IX Rule 13 of CPC, 1908 and under Section 5 of the Limitation Act, 1963 on 02.04.2022. He, ironically and conveniently, realised the negligence and inaction on the part of his counsel at the time of filing of the present applications. The applicant/defendant No. 1, despite being aware that the Written Statement was required to be filed, no explanation is forthcoming from him as to what steps had been taken by him to ensure the preparation and signing of the Written Statement. It is pertinent to mention that during the course of arguments, while emphatically arguing about the negligence of the counsel, it was conceded that no fee whatsoever was paid to the Advocate.

26. The plea taken by the applicant/defendant No. 1 is that he had engaged Mr. Vineet Malhotra, Advocate as his counsel, but there was one



Mr. Vishwaman, Advocate, who appeared on his behalf, and thereafter, he failed to appear on subsequent dates. Thereafter, one Mr. Kushagra Singhraj, Advocate appeared on behalf of the applicant/defendant No. 1 on 13.11.2019. However, no *vakalatnama* of Mr. Vineet Malhotra for and on behalf of the applicant/defendant No. 1 is placed on record. Moreover, it is Mr. Vishwaman, Advocate, who had appeared on behalf of the applicant/defendant No. 1 on 27.02.2018. Interestingly, on 13.11.2019, Mr. Kushagra Singhraj and Mr. Vishal Gohri, Advocates had appeared for applicant/defendant No. 1 as per the Order however, Mr. Vishal Gohri had filed his *vakalatnama* on behalf of the defendant Nos. 2 and 3.

27. The averments made by the applicant/defendant No. 1 about the alleged negligence on the part of Mr. Vineet Malhotra, Advocate are not borne out from the record.

28. It is also pertinent to note that the defendant No. 2/Ms. Anu Mahajan and the defendant No. 3/Mr. Dharam Pal Mahajan are the wife and father of applicant/defendant No. 1 respectively. It is quite evident that there was a representation on behalf of the defendant No. 2/Ms. Anu Mahajan and defendant No. 3/Mr. Dharam Pal Mahajan, but no Written Statements got filed even on their behalf and their right to file Written Statement along with that of applicant/defendant No. 1, was closed *vide* Order dated 13.11.2019.

29. The grounds as agitated by the applicant/defendant No. 1 in non-filing of the Written Statement for contesting the Suits are clearly not tenable from the proceedings/submissions and conduct of the applicant/defendant No. 1 himself.

30. It is also pertinent to note that despite being aware of the institution of the Suits against him since beginning and also having become aware of the



Judgment and Decree dated 15.11.2019 on the same day itself, no action was taken by the applicant/defendant No. 1 till filing of the present applications.

31. The applicant/defendant No. 1 himself states that he was informed by his counsel on the same day about the said Judgment/Decree which again shows that the counsel was not negligent as asserted by the applicant/defendant No. 1.

32. Furthermore, to justify his inaction, the applicant/defendant No. 1 claims that the application for certified copy of the Judgment/Decree dated 15.11.2019 was made on 30.11.2019 and the same was made available in the first week of March, 2020. Significantly, the certified copy of the Judgment/Decree which was allegedly obtained on the basis of which the limitation period is sought to be excluded, does not find any place on the record and the same has not been filed till date.

33. Moreover, the date of receiving the certified copy is vaguely stated to be in first week of March, 2020 which again reflects the indifference and negligence of the applicant/defendant No. 1 in making assertions without even giving the exact date. In the absence of the certified copy of the Judgment/Decree dated 15.11.2019 on record, the contention of the applicant/defendant No. 1, is again not believable.

34. The applicant/defendant No. 1 has sought exclusion of period from 15.03.2020 till 28.02.2022 on the ground of COVID-19 Pandemic outbreak. Significantly, the time for filing the Appeal was 30 days from the date of Judgment/Decree i.e., 15.11.2019 and no explanation has been given explaining the delay till outbreak of COVID-19 Pandemic.

35. Pertinently, only to cover this period, the specious claim has been made of the certified copy of the Judgment/Decree dated 15.11.2019 having



been obtained.

36. Furthermore, even if these contentions of the applicant/defendant No. 1 are accepted, then too, he had 14 days from 15.11.2019 till 30.11.2019 and from first week of March, 2020 till 15.03.2020 to have filed the Appeal. Even if the said period is added up, then too, the applicant/defendant No. 1 has not been able to explain his alleged delay in filing the present Applications under Order IX Rule 13 of CPC, 1908, beyond 30 days.

37. Further after 28.02.2022 also, the present applications have been filed on 02.04.2022 i.e., after more than 30 days.

38. The Court experience has shown that there is a tendency amongst the litigants to shift blame/fault of their own negligence on the Advocates. The applicant/defendant No. 1 has even gone to the extent of filing of the complaint against his counsel, Mr. Vineet Malhotra after 15 months which makes it abundantly clear that the complaint was made only to justify the grounds for moving the present Applications under Order IX Rule 13 of CPC, 1908 and under Section 5 of the Limitation Act, 1963.

39. The entire conduct of the applicant/defendant No. 1 as discussed above clearly reflects that he was all throughout aware of the present proceedings and was even following up the proceedings, but for whatsoever his personal reasons may have been, he has not been able to contest the Suits effectively.

40. There is no cogent explanation given on behalf of the applicant/defendant No. 1 for his reason not to effectively conduct the trial or to thereafter file the Applications under Order IX Rule 13 of CPC, 1908 for setting aside the Judgment/Decree dated 15.11.2019 within limitation.

41. For the foregoing discussion, there is no merit in the present



Applications under Order IX Rule 13 of CPC, 1908 for setting aside the Judgment/Decree dated 15.11.2019 and the Applications under Section 5 of the Limitation Act, 1963 seeking condonation of 89 days' delay in filing the Applications under Order IX Rule 13 of CPC, 1908, which are hereby dismissed.

I.A. 5287/2022 (u/S 151 of CPC, 1908 by D-1 for ad interim ex parte stay of Judgment and Decree dated 15.11.2019) in CS(OS) 660/2017

I.A. 5290/2022 (u/S 151 of CPC, 1908 by D-1 for ad interim ex parte stay of Judgment and Decree dated 15.11.2019) in CS(OS) 662/2017

42. In view of the Order passed in I.As. 5286/2022, 5289/2022 under Order IX Rule 13 of CPC, 1908 and I.As. 5288/2022, 5291/2022 under Section 5 of the Limitation Act, 1963, the present applications have become infructuous, which are hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

MARCH 22, 2024
S.Sharma