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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No. 1672 OF 2015

IN

APPEAL (L) No. 713 OF 2015

IN

SUMMONS FOR JUDGMENT No. 495 OF 2009

IN

SUMMARY SUIT No. 2602 OF 2009

M/s. Sai Mirra Innopharm Pvt. Ltd. ... Applicants

In the matter between :

M/s. Sai Mirra Innopharm Pvt. Ltd. ... Appellants

Vs.

M/s. Ruby Organics Pvt. Ltd. ... Respondents

Dr. Birendra Saraf a/w Rohan Kadam, Ms. Gauri Rege i/b M/s.
Nankani & Associates, for the Applicants / Appellants.

Mr. Sanjay Jain a/w Ramesh Jain, for the Respondents.

CORAM : V. M. KANADE, &

Dr. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : OCTOBER 21, 2015

PC.

1. Heard the learned counsel appearing on behalf of the Applicants and the learned counsel appearing on behalf of the Respondents. The Applicants have taken out the motion for condonation of delay of 702 days, caused in filing the appeal. It is submitted that this delay has been caused since the day on which the judgment and order was passed by the learned Single Judge in the

summons for judgment, taken out by the Respondents, an order was also passed on an application filed by the Appellant under Section 8 of the Arbitration and Conciliation Act, 1996. He submitted that Appellants were advised to challenge that order and not the impugned order, which is challenged in the appeal. He submitted that the said appeal, viz. Appeal (L) No. 54 of 2014 was disposed of on 3.9.2015, and thereafter the present appeal has been filed. It is submitted that the Appellants were bona fide pursuing the remedy, which was available to them, and only after that remedy was over i.e. their appeal was dismissed, Appellants, thereafter, have filed this present appeal.

2. On the other hand, Mr. Jain, learned counsel appearing on behalf of the Respondents submitted that the Appellants have not come to this Court with clean hands. He submitted that appeal, which was filed challenging the order passed in an application under Section 8 of the Arbitration and Conciliation Act, 1996 has never been served on the Respondents, and secondly, a statement was being made before the Appellate Court in Appeal (L) No. 54 of 2014 that the matter is being settled. Said statement made on 23rd June 2014, 21st July, 2014 and 6th January, 2015. The statement was made that parties have amicably settled the dispute and needed time to file consent terms. He submitted that the Appellant tried to take the Court for a ride and kept the appeal pending without serving copy on the Respondents. He then submitted that no explanation has been given by the Appellants for the delay, except one, given in paragraph 4 of the affidavit in support of

notice of motion that they were pursuing the appeal against the order passed by the learned Single Judge under Section 8 of the Arbitration and Conciliation Act, 1996.

3. Taking into consideration the above facts, we are of the view that the Appellants, firstly, have not approached the Court with clean hands and obviously are making an attempt to protract the proceedings. The explanation given by the Appellants is not a plausible explanation, and as such, no sufficient cause has been shown for condoning the delay of 702 days. Hence, notice of motion is dismissed.

4. In view of dismissal of the motion for condoning the delay, Appeal (L) No. 713 of 2015 does not survive and is accordingly disposed of.

[Dr. SHALINI PHANSALKAR-JOSHI, J.]

[V. M. KANADE, J.]

Vinayak Halemath