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

+ RFA 303/2015

VINOD KUMAR BHATIA

..... Appellant

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Asif Ahmed, Adv.

versus

M/S ROBIN INTERNATIONAL LTD

..... Respondent

Through: Mr. Rajeev Nanda, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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13.10.2015

CM APPL.8336/2015 (condonation of delay in filing the appeal)

1. This is an application seeking condonation of delay in filing the appeal. Even according to the appellant, there is a delay of 3570 days. In the application the reasons set out for seeking condonation of delay are as follows:

(i) It is averred that the appellant became aware of the impugned judgment and decree dated 31.3.2005, only in September, 2013, when he received summons from the court of the District Judge-I, Mapusa, on 13.9.2013.

(ii) It is further averred that defendant No.3 (i.e. respondent No.3 in the present appeal) was entrusted with the responsibility of defending the suit instituted by respondent No.1/plaintiff as the appellant was not residing in India, at the relevant point in time.

2. It is thus the case of the appellant that he was informed by defendant No.3/respondent No.3, on 22.3.2005, that the suit has been decided and, therefore, there was nothing to pursue any further insofar as the suit was concerned.

3. It is in this background that the appellant has contended that the knowledge was acquired only on 13.9.2013, as indicated above. It is further averred that appellant had taken out proceedings under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure, 1908. The said application was filed on 15.10.2013, which was, dismissed on 8.1.2015.

3.1 Thereafter, it appears, a writ petition was filed in Bombay High Court which was also disposed of on 10.2.2015.

4. It is in this background that the present appeal along with the captioned application has been filed.

5. It is the submission of the counsel for appellant that respondent No.3/defendant No.3 who was entrusted with defending the suit misled the appellant into believing that the suit had been terminated, albeit in his favour on 22.3.2005.

5.1 In support of this submission, the learned senior counsel has relied upon an affidavit dated 24.4.2004, filed by respondent No.3/defendant No.3. It is stated that this affidavit would show that respondent No.3/defendant No.3 colluded with the appellant, which resulted in the passing of the impugned judgment and decree.

5.2 In other words, it is contended that because there was collusion between respondent No.1/plaintiff and respondent No.3/defendant No.3, the appellant was kept in the dark about the factum of passing of the impugned

judgment and decree.

7. I have heard learned senior counsel for the appellant. In the suit the appellant is impleaded as defendant No.2. Therefore, in any event, it was incumbent upon the appellant/defendant No.2 to defend the suit in his own right. The impugned judgment shows, quite clearly, that despite several opportunities having been given, the defendants (which include the appellant) failed to lead any evidence in the matter.

8. Insofar as the affidavit dated 24.4.2004 is concerned, it is an affidavit which is largely indicative of the role that respondent No.3/defendant No.3 played in introducing the appellant/defendant No.2 and respondent No.1/plaintiff. In the affidavit there is also reference to the fact that there was no defect in the consignment and that payments for supplies made had been unduly delayed. The affidavit, *per se*, does not show any collusion, as is sought to be contended before me by the learned senior counsel.

8.1 There is a possibility what is stated in the affidavit was true. Nothing prevented the appellant/defendant No.2 from leading evidence in the matter in his right. What is inexplicable though, is that, how could the appellant, who is a literate person, have accepted a bald statement of respondent No.3/defendant No.3 that the suit has got successfully terminated in March, 2005, in his favour, without having asked for a copy of the judgment. The assertions made in this behalf are not believable.

9. There is a huge delay in the matter which cannot be condoned as no sufficient cause has been shown. Accordingly, the application is dismissed.

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10. In view of the above, the appeal and application for stay will have to suffer the same fate. Accordingly, the appeal and the captioned application are dismissed.

RAJIV SHAKDHER, J

OCTOBER 13, 2015

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