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

+ **FAO(OS) 21/2016**

HSIL LTD

..... Appellant

Represented by: Mr.Manav Gupta,
Mr.Prabhsahay Kaur,
Mr.Avinash, Advs.

versus

MANISH VIJ & ORS

..... Respondent

Represented by: Mr.R.S.Suri, Sr.Adv. instructed
by Mr.Rohit K.Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

01.02.2016

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CMs. 2555-56/2016

Exemption allowed subject to just exceptions.

FAO(OS) 21/2016

1. Yet another case of supine negligence and callous attitude by a lawyer, resulting in the client suffering at the alter of procedures of the law, but a vigilant Judge having saved the situation.
2. Since Courts in India have always treated procedural laws as subservient to substantive laws, attempts have always been made by Courts to ensure that if the opposite side can be recompensed with cost, procedural lapses by counsel engaged by the parties need to be ignored.
3. Law draws a distinction between negligence by a party and a negligence by an agent. Negligence by a party is, for purposes of condonation, subjected to a stricter level of scrutiny vis-a-vis negligence by

the agent.

4. When parties engage a lawyer a trust and believe that the lawyer would prosecute the proceedings diligently.

5. With this backdrop ethos, we simply have to note the facts that the appellant's suit for injunction and damages concerning its trademarks was defended by the defendants on the plea that what they were doing was at the behest of the plaintiff.

6. Injunction ensued, it had to be. Suit proceeded for trial concerning damages.

7. Pleadings were completed in time. Whereas the plaintiff filed the documents on which the plaintiff intended to prove its case, the defendants handed over the documents to their counsel who filed the same but indicating a wrong number of the suit. The documents were returned with objections and the lawyer did nothing. Unfortunately, this was not brought to the notice of the learned Joint Registrar when on August 08, 2014 admission/denial of the documents was done. On said date counsel for the defendants admitted/denied the documents filed by the plaintiff and did not record the submission that for the plaintiff to do likewise a date may be given because the documents filed by the defendants were not on the record.

8. No steps being taken by the counsel for the defendants to ensure that the documents filed were brought on record and the plaintiff called upon to admit/ deny the documents, on September 18, 2014 issues were got settled. Thereafter, the plaintiff commenced recording of its evidence by examining its witnesses.

9. Counsel for the defendants allowed the time to pass by. No steps were taken to ensure that the documents which were filed and returned with

objections by the Registry were brought on record. Evidence commenced before a learned Local Commissioner. The date November 17, 2015 was reached. At that stage counsel for the defendants was changed and the new counsel realised the handicap because such documents which were intended to be confronted to PW-1 were not on record.

10. A belated application was filed on December 18, 2015 which was registered As IA No.25792/2015. Order VIII Rule 1A(3) of the Code of Civil Procedure was invoked by the defendants. It is apparent that the prayer made was that the documents of the defendants be taken on record, and for which the facts noted by us hereinabove concerning negligence by the counsel for the defendants, in not ensuring that the documents were placed in the suit file by removing the objections listed by the Registry, were pleaded.

11. Vide impugned order dated December 21, 2015 the learned Single Judge has taken on record the documents, imposing cost upon the defendants in sum of ₹1 lakh to be shared in the manner provided in the impugned order.

12. The grievance of learned counsel for the appellant is that so supine is the negligence that it spanned three years, during which the suit travelled to the stage of the plaintiff examining its PW-1.

13. The documents which are sought to be placed on record have been perused by us. They consist of e-mail exchanged between the parties as also communication with the statutory authorities.

14. Keeping in view the defence raised we are of the opinion that the learned Single Judge has rightly exercised discretion to condone the delay for which we find entire negligence is on the shoulders of the lawyer of the

defendants and not the defendants themselves.

15. Since for the inconvenience caused to the plaintiff exemplary cost has been imposed, we reiterate that the injury caused to the appellants by the delay stands recompensed.

16. At this stage we note that the negligence by the lawyers continues. Having ensured that the documents were brought on record no request was made to the Court to list the suit for admission/denial of the documents taken on record and as filed by the defendants.

17. We direct that the suit would be listed before the Joint Registrar on February 08, 2016, on which date representative of the plaintiff or the counsel shall admit/deny the documents filed by the defendants.

18. Since counsel for the defendants are responsible for the delay occasioned we further direct that no accommodation shall be given to the defendants by the Local Commissioner unless a very pressing ground for adjournment concerning non-availability of the witness of the defendants is made out. Under no circumstances deferment would take place to accommodate the counsel for the defendants.

19. At this stage learned counsel for the plaintiff says that in view of the documents filed by the defendants even the plaintiff may be given a right to file additional documents because some of the documents filed by the defendants are incomplete.

20. Learned counsel for the respondents i.e. the defendants says that the consent of the defendants be recorded that even the plaintiff be permitted to file further documents. We therefore permit the plaintiff to file further documents in the suit.

21. This would entitle the plaintiff to file supplementary affidavit by way of examination-in-chief of its witness keeping in view the defendant's documents now brought on record as also further documents which the plaintiff has been permitted to file with the consent of the defendants.

22. The appeal is accordingly disposed of maintaining the impugned order and issuing further directions by consent and another direction which would be the consequence of the consent direction.

23. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 01, 2016
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