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

+ **CS(OS) No.889/2008**

M/S PODDAR GLOBAL LIMITED

..... Plaintiff

Through: Mr. Barun Kumar Sinha with Ms.
Pratibha Singh, Advts.

versus

SERVANTS OF PEOPLE SOCIETY & ANR

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.09.2016

O.A. No.166/2016 (of the plaintiff against the order dated 14th August, 2015 of the Joint Registrar and IA No.10662/2016(for condonation of 243 days delay in filing the appeal) and IA No.10663/2016 (for condonation of 74 days delay in re-filing the appeal).

1. This Chamber Appeal, preferred after a long delay with applications for condonation of 243 days in filing and 74 days in re-filing, impugns the order dated 14th August, 2015 of the Joint Registrar closing plaintiff's evidence.
2. The counsel for the appellant/plaintiff has been heard.
3. None appears for the defendants inspite of advance copy stated to have been given.
4. Issues in this suit for recovery of Rs.1,02,90,576/-with interest, and which qualifies as a commercial suit within the meaning of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, were framed on 16th May, 2014 and parties directed

to file their list of witnesses within four weeks and the plaintiff directed to file affidavits by way of examination-in-chief of all its witnesses within eight weeks and the matter placed before the Joint Registrar on 15th September, 2014.

5. As per the Office Note, the plaintiff neither filed list of witnesses nor any affidavits by way of evidence.

6. On 15th September, 2014 when the matter was listed before the Joint Registrar, the counsel for the plaintiff sought adjournment on the ground that the witness of the plaintiff had not signed the affidavit till then. Observing that there was no plausible explanation for not complying with the earlier order dated 16th May, 2014, an opportunity was granted to the plaintiff to file affidavits by way of evidence positively within eight weeks and subject to costs of Rs.5,000/- to the defendants and the matter adjourned to 3rd March, 2015.

7. The order dated 3rd March, 2015 of the Joint Registrar records that the plaintiff had till then also neither filed the affidavit of its witnesses nor paid the previous costs and the counsel for the plaintiff sought another opportunity on the ground that the witness was not in town. Again observing that there was no reason to grant any further opportunity but in the interest of justice “another last opportunity” was given to the plaintiff subject to payment of costs of Rs.10,000/- to the defendants. The plaintiff was directed to file affidavit of its witness “positively within eight weeks” and it was clarified that no further opportunity shall be given. The matter was adjourned to 14th August, 2015.

8. The order of 14th August, 2015 records that though the affidavit of the witness of the plaintiff was on record but the witness was not present and it was stated that he was out of station. Even the counsel for the plaintiff did not appear and sent a proxy counsel. The previous cost of Rs.5,000/- and Rs.10,000/- were also not paid. Observing that last opportunity had already been given to the plaintiff and no reason had been given as to why the witness inspite of notice of more than five months had gone out of station, the evidence of the plaintiff was closed.

9. The plaintiff still did not act with promptitude and has filed this appeal after much delay as aforesaid. In the applications for condonation of delay in filing and re-filing it is stated that the reasons for the delay are set-out in the Chamber Appeal. However a perusal of the Memorandum of Chamber Appeal shows the plaintiff to have merely stated “that absence of appellant/plaintiff was unintentional and *bona fide*”. Not even an iota of reason for the delay is disclosed and no reason for non-payment of costs and for non-appearance of the witness and as to why the witness whose affidavit had been filed could not be available is given.

10. It is clear that the suit is being pursued just to keep the same pending.

11. The plaintiff has not even bothered to pay a lip service to Section 5 of the Limitation Act, 1963.

12. No fault in the scenario aforesaid is found with the order under appeal.

13. The counsel for the plaintiff also has only one submission i.e. that only one opportunity be given to the plaintiff to conclude its evidence.

14. The aforesaid does not constitute any argument in law.

15. The plaintiff has been given three opportunities and which are found to be sufficient and no reason as to why those opportunities could not be availed is even pleaded or disclosed.

16. No reason lest sufficient cause to condone the delays in filing and re-filing Chamber Appeal is disclosed.

17. There is no merit in the appeal.

18. Dismissed.

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19. The defendants are not found to have filed any counter claim.

20. Though the plaintiff failed to lead any evidence as aforesaid but the counsel for the defendants, on 14th August, 2015 after evidence of the plaintiff was closed, sought an opportunity to lead evidence.

21. It is not understandable as to what was/is the need for the defendants to lead evidence when the plaintiff has failed to prove its own case.

22. Though a perusal of the issues framed shows onus of one of the issues, with respect to the territorial jurisdiction, to have been placed on the defendants, but once the plaintiff has failed to prove its case, the need to adjudicate the issue of territorial jurisdiction does not arise.

23. Not only so, the defendants also have availed of two opportunities to lead evidence and have been seeking adjournments.

24. The learned Joint Registrar is requested to not unnecessarily keep the suits pending merely because the parties are desirous of keeping the same pending. Once the plaintiff's evidence had been closed, the suit should have been placed before the Bench for appropriate orders in the suit as the suit was liable to be dismissed.

25. In the aforesaid state of affairs, as a result of the plaintiff having failed to prove its claim, the suit is dismissed.

26. Since the defendants also have taken misconceived steps to lead evidence inspite of the plaintiff's failure to lead any evidence and have failed to appear today, no costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 02, 2016

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