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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : January 19, 2016

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FAO(OS) 91/2015

M/S VISIONAIRE INDIA

..... Appellant

Represented by: Mr.Anil K.Aggarwal, Advocate

versus

M/S IBM INDIA PVT LTD

..... Respondent

Represented by: Ms.Surekha Raman, Advocate with
Mr.Purshottam Kumar Jha, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. The appellant is the plaintiff. The respondent is the defendant. Suit for recovery in sum of ₹56,37,725/- was filed. In the memo of parties two addresses of the respondent for service were disclosed. The first at Delhi and the second at Bangalore.

2. Summons in the suit were issued on September 18, 2012 returnable for February 27, 2013. At the Delhi Office the respondent was served on November 19, 2012. Time prescribed by the Code of Civil Procedure within which written statement could be filed expired on December 19, 2012. A written statement was filed with a delay of 59 days on February 18, 2013. IA No.15019/2013 was filed praying that delay in filing the written statement be condoned or that time be extended by 59 days to file the written statement. The application was returned by the Registry pointing out

the deficiencies therein. It was re-filed after 159 days.

3. The suit was listed before the learned Joint Registrar on February 27, 2013, by which date the application for taking on record the written statement was not on record. Said fact was noted by the learned Joint Registrar. Strangely, the learned Joint Registrar wrote in the order dated February 27, 2013 that counsel for the plaintiff expressed inability to conduct admission/denial. Where was the occasion for the plaintiff to conduct any admission/denial because the defendant had yet to file the documents.

4. Adjourning the matter for September 05, 2013, the learned Joint Registrar noted on said date that the application for delay to be condoned has not been listed, the learned Joint Registrar closed the right of the defendant to file the written statement but recorded that even the appellant was negligent in not filing the original documents. The matter was adjourned to February 13, 2014 imposing cost against the appellant.

5. Regretfully, the learned Joint Registrar overlooked the fact that the plaintiff had filed along with the suit an application which was registered as IA No.17146/2012 praying to the Court that for the reasons mentioned in the application it may be exempted from filing the original documents.

6. In this backdrop of facts, vide order dated November 29, 2014, the learned Joint Registrar proceeded to consider application filed by the respondent for delay to be condoned in filing the written statement and the same to take on record the written statement.

7. By a cryptic order the application was dismissed against which chamber appeal filed by the respondent was allowed vide impugned order dated January 15, 2015.

8. While condoning the delay the learned Single Judge has made comments against the appellant by drawing strength from the order dated September 05, 2013 passed by the learned Joint Registrar.

9. Said comments passed by the learned Single Judge are completely unwarranted and are suffering from same taint as is the order dated September 05, 2013 passed by the learned Joint Registrar, the absurdity of which we have already highlighted hereinabove in para 5.

10. The impugned order (allowing the chamber appeal) dated January 15, 2015 is lengthy and gives various reasons, which are unsound for holding that the respondent would be entitled to time being extended in filing the written statement.

11. We therefore do not list out the reasoning of the learned Single Judge, which learned counsel for the respondent concedes cannot be sustained, but look to the issue sans the reason.

12. Shorn of verbosity, justification given for extension of time/delay to be condoned in filing the written statement was that service at the office at Delhi should not be treated as proper service because it was the research centre. Though not pleaded, meaningfully read the pleading is that a company needs to be served at its head office or its corporate office, which was Bangalore. Admitting that the respondent was served subsequently at Bangalore which has pleaded that part documents were at the Delhi Office and part documents were in Bangalore. A lawyer was engaged. Documents were coalesced. It took time for the lawyer at Bangalore to coordinate with the lawyer at Delhi. This occasioned the 59 days' delay in filing the written statement. That the application which was filed praying that delay being condoned in filing the written statement was returned with objections and

was re-filed after 159 days would not be an act attributable to the client but would be an act attributable to the agent i.e. the lawyer and it is trite that negligence by the agent is condoned more liberally by a Court vis-a-vis negligence by the principal.

13. Noting that the learned Single Judge has imposed cost in sum of ₹30,000/- against the respondent to recompense the appellant the inconvenience caused, we dismiss the appeal by correcting the reasons as to why the respondent was entitled to the delay being condoned in filing the written statement. Good reasons have been given for delay to be condoned.

14. There shall be no orders of cost in the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JANUARY 19, 2016
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