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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 257/2016

GILL INDIA COMMUNICATIONS PVT LTD

..... Petitioner

Through Mr.Aaditya Vijay Kumar and Ms.Liza
M. Baruah, Advocate.

versus

TAPATI SARKAR

..... Respondent

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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15.03.2016

C.M. No.9471/2016 (exemption)

C.M. No.9472/2016 (exemption)

Exemption is allowed subject to just exceptions. Applications disposed of.

CM(M) 257/2016 & C.M. No.9526/2016 (stay)

Petitioner is aggrieved by the order dated 18.02.2016 vide which his application filed under Section 151 CPC stood dismissed. Vide this application the prayer made was that the defendant/petitioner be permitted to cross-examine the witnesses of the plaintiff which had been declined as the Court had noted that the evidence of the plaintiff stood closed on a much earlier date.

Record shows that the present suit is a suit for recovery of

Rs.1,33,333/- against the defendant. Defendant was proceeded ex parte on 16.3.2010. Efforts were made to get the ex parte order set aside but all efforts failed. The application filed under Order IX Rule 7 of the CPC stood dismissed. This was on 15.11.2011. Review petition against that order stood dismissed on 23.7.2012. The present application was filed on 07.02.2012. Although this was an application under Section 151 of the CPC yet the submission of the learned counsel for the petitioner that this application be treated as an application under Order XVIII Rule 17 of the CPC and his arguments on this submission is based on a judgment of the Apex court reported as [2011] 4 SCR 31 K.K.Velusamy v. N.Palanisamy is noted. Even presuming that this application is presumed to be an application under Order XVIII Rule 17 of the CPC, the law of limitation cannot be given a go-by; it cannot be ignored.

The conduct of the petitioner was lackadaisical and was correctly appreciated by the Trial Judge. The Trial Judge had noted that in spite of various opportunities, the plaintiff did not get the ex parte order set aside which was passed against him on 16.3.2010. Attention has been drawn to the orders dated 09.8.2010, 19.11.2010 and 09.12.2010. The petitioner in spite of all opportunities did not take steps to get that order set aside. On 04.3.2011, the Court had reiterated that no application has been filed; even under Order IX Rule 7 of the CPC; it was on that date that PW-1 was examined-in-chief and discharged. On 04.3.2011, the petitioner was not present for cross-examination of PW-1. His submission that he had wrongly noted the date as 17.3.2011 even presuming it to be correct yet he having filed the present application

after almost one year i.e. on 07.02.2012 again shows the casual attitude of the petitioner; it is bordering on negligence; such a litigant deserves no sympathy from Court.

Impugned order in this background dismissing his application under Section 151 of the CPC suffers from no infirmity. This petition has been filed mala fide. It has no merit. It is dismissed with costs of Rs.10,000/-

INDERMEET KAUR, J

MARCH 15, 2016
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