Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 15246 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 15248 OF 2017

SBI Capital Markets Limited ...Appellants
Versus
Western Paques India Ltd ...Respondent

Mr Shashank Choudhary, *with Ms Sunitha Perumal, i/b Sachin V Masurkar, for the Appellants.*
Mr AH Gokhale, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 1st August 2017

PC:-

1. Heard.

2. The Appellant is the Plaintiff. It challenges an order of 7th November 2016 dismissing the Plaintiff's Notice of Motion No.4448 of 2015 for condonation of a delay of 60 days in filing the Motion, and seeking to set aside an order of 22nd September 2015 dismissing the suit.

3. In ordinary circumstances, courts in appeal always show some latitude. At best, there may be an order of costs made against the Plaintiff, and the Plaintiff may also put to terms not to seek further adjournments and so on. This, however, is by no means an ordinary case. To begin with, the Plaintiff is not an ordinary individual litigant, or one who is illiterate or financially incapable. This is SBI Capital Markets Limited, a financial behemoth. It has more than sufficient financial resources. It undoubtedly has a full-fledged legal department. It is no stranger to litigation either in this Court or in the Civil Court.

4. There is of course no valid explanation for the delay in filing the Motion. But I will keep that consideration aside for the movement. What the record indicates is alarming. The suit was pending for recording the evidence of the Plaintiff, SBI Capital Markets since 21st November 2015 when issues were framed. By then the suit was already 10 years old, having been filed in 1997. Rather than give the Plaintiff any cause for further delay, this should have required the Plaintiff to be more alert. The record indicates that despite this delay, and even though the case was old — or perhaps precisely because of those reasons — the presiding officer of the Civil Court granted the Plaintiff some latitude and allowed the filing of an evidence Affidavit a good four months later on 15th June 2015. On that date nobody appeared for the Plaintiff in the Court — neither the Advocate (and the Plaintiff was the represented by a firm) nor any person on behalf of SBI Capital Markets. As it happens, the suit was dismissed for default on 15th June 2015. On an application made on that very day, the suit was immediately restored. The Plaintiff was granted yet another opportunity. That order of dismissal was set aside and the suit was fixed on 25th June 2015 for filing the evidence affidavit. Even on that date no evidence affidavit was filed and no documents were tendered. The Court would have been justified in dismissing the suit finally on that date. It did not do so. It granted this Plaintiff yet another indulgence, adjourning the matter to 12th August 2015. Yet again nobody appeared for or on behalf of the Plaintiff. Yet again, the Court granted a further indulgence and adjourned the matter to 22nd September 2015.

5. This means that from 21st February 2015, for almost exactly seven months this case was adjourned repeatedly only to accommodate the Plaintiff.

6. On the last date of 22nd September 2015, for the third or fourth time, the Plaintiffs and their Advocates were absent. I do not see what further option the Court had. It could not reasonably be expected to constantly adjourn this case only to indulge this Plaintiff. It therefore dismissed the Suit for default.

7. There is a mandate across the district judiciary that cases that are more than 5 and 10 years old must be disposed of expeditiously. There is no use in the Appellant saying now that all this happened in "a very short time frame of only seven months". The case was already on a priority track being a old case. Nothing explains why the Plaintiff squandered one opportunity after the other to file the evidence affidavit. Indeed that was all that was required to do at that stage.

8. Before the Trial Court it was submitted that the Advocate engaged by the Plaintiff was unwell on 22nd September 2015. There was nothing to show this, but that apart, there is no explanation why the affidavit was not tendered in all that time.

9. To make matters worse, a statement was made that the evidence affidavit was actually ready since 24th June 2015. This does not explain why it was not filed on 25th June 2015, 12th August 2015 or 22nd September 2015. The Trial Court therefore correctly concluded that the Plaintiff has not been vigilant in conducting its proceedings.

10. As to the question of the Advocates, the record itself will indicate that various advocates appeared at various times and it is not as if the Plaintiff was represented only by an individual. It was represented by a law firm. If one advocate or attorney was unavailable any other could have appeared. After all, the only thing that had to be done was to file the evidence affidavit.

11. This is also not a case of a party suffering for an advocates' default. In any case, that is not a principle that can fairly be applied to a litigant like this appellant-plaintiff, one fairly bristling with all manner of legal resources of its own, and in no shortage of funds.

12. If this is how public sector financial corporations propose to conduct their litigations, then it should be made clear that courts will not indulge them. Courts at any level are not to be taken for granted. The statement that these are public sector corporations and we are dealing with public funds is not an argument that impresses or persuades. It certainly does not intimidate. In fact what it points out is that these very custodians of public funds, entities like the Plaintiff, well armed with resources and legal departments, have been utterly derelict in their duty in protecting that much-vaunted public interest and those very public funds.

13. In the meantime, the company has gone into liquidation. The Official Liquidator has been joined to the suit. That is also no reason to find for the appellant. To the contrary: there is no reason why the body of creditors and the Official Liquidator should now be put to the additional trouble and expense of defending a suit that a plaintiff like the plaintiff allowed twice to be dismissed for default.

14. The Appeal is dismissed. In view of the disposal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

15. The Appellant should consider itself lucky that while dismissing this Appeal I am not today awarding costs. It will do well to remember that this order of no costs is an exception, unlikely to recur ever again.

(G. S. PATEL, J.)