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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 55/2016**
ALL INDIA INSTITUTE OF MEDICAL SCIENCES..... Plaintiff
Through: Mr. R.K. Gupta & Mr. A.K. Singh,
Advs.
Versus
M/S HEWLETT PACKARD (I)
SALES PVT LTD & ORS Defendants
Through: Mr. Samar Bansal & Ms. Shreya
Singh, Advs. for D-1.
Mr. K.B. Soni, Adv. for D-2.
Mr. Gaurav Bhardwaj, Adv. for D-3.
Mr. B.C. Pandey, Adv. for D-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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27.11.2017

OA No.116/2017 (of the plaintiff)

1. This Chamber Appeal impugns the orders dated 28th February, 2017 and 17th May, 2017 of the learned Joint Registrar.
2. Vide order dated 28th February, 2017, the evidence of the plaintiff was closed and vide order dated 17th May, 2017, the suit ordered to be placed before this Bench for the reason of the counsel for the defendants having stated that the onus of the issues No.1&2 framed in the suit being on the plaintiff and the plaintiff having not led any evidence with respect to the same, the defendants need not examine any witness.
3. This appeal itself was accompanied with an application being IA No.9929/2017 for condonation of delay of 163 days in filing thereof.

4. The appeal along with application for condonation of delay came up before this Court on 31st August, 2017 when delay was condoned subject to payment of costs of Rs.10,000/- and notice of the appeal ordered to be issued.
5. The counsel for the plaintiff today states that reply to the appeal has been filed by the defendants no.3&4 viz. R.S. Tyagi and Sanjay Gupta and seeks adjournment.
6. No reply to a Chamber Appeal is required to be filed and the Chamber Appeal has to be decided on the basis of material on record. Thus the same is no ground for adjourning the Chamber Appeal.
7. The counsels for the defendants on enquiry state that cost of Rs.10,000/- subject to payment of which the delay in filing the appeal was condoned has not been paid.
8. The counsel for the plaintiff states that it will be paid within one week.
9. The matter has been considered on merits.
10. Though the plaintiff, in this Chamber Appeal, has also challenged the order dated 17th May, 2017 but possibly can have no grievance with respect thereto and the grievance if any has to be with respect to the order dated 28th February, 2017 only.
11. In this suit filed by the plaintiff for recovery of Rs.1,16,50,041/- jointly and severally from the four defendants, vide order dated 16th October, 2015, the following issues were framed:

“(1) Whether the plaintiff is entitled to the suit amount or any other amount? OPP

- (2) Whether the plaintiff is entitled to interest? If yes, at what rate and for what period? OPP
- (3) Whether there is any valid cause of action against defendant nos.3 and 4 for filing of the suit? OPD-3&4
- (4) Whether the suit is within time or is barred by limitation? Onus put on respective parties.
- (5) Relief.”

and the suit placed before the Joint Registrar on 15th January, 2016 for fixing the dates of trial.

12. On 15th January, 2016 and 28th January, 2016, nothing of substance transpired before the Joint Registrar. Vide order dated 25th February, 2016, the matter was again placed before the Joint Registrar on 3rd May, 2016 for fixing the dates of trial.

13. The Joint Registrar on 3rd May, 2016 directed the plaintiff to file affidavits by way of examination-in-chief of all its witnesses within four weeks with advance copy to the counsel for the defendants and listed the matter on 1st August, 2016 for examination of the said witnesses of the plaintiff.

14. The plaintiff did not take any action till 1st August, 2016 when the counsel for the plaintiff sought adjournment and which was granted subject to payment of cost of Rs.10,000/- and making the same a last opportunity and the matter listed on 29th September, 2016.

15. By 29th September, 2016, the position remained the same. The cost imposed earlier was also not paid. No witness of the plaintiff was present before the Joint Registrar on that date though the plaintiff had supplied copy of the affidavit by way of examination-in-chief to the opposite counsel.

16. The counsel for the plaintiff states that affidavit by way of examination-in-chief of one K.D. Sharma, Senior Stores Officer (Retd.) of the plaintiff was filed on 4th August, 2016.

17. Observing that the plaintiff did not seem to be interested in pursuing the suit but yet again in the interest of justice granting another opportunity subject to further payment of cost of Rs.10,000/-, the suit was posted for 6th December, 2016 for evidence of the plaintiff.

18. By 6th December, 2016 also no other affidavit had been filed and no witness of the plaintiff was present and again adjournment was sought by the counsel for the plaintiff and notwithstanding the earlier order, of the same being a last opportunity, yet another opportunity was granted to the plaintiff to file affidavit by way of examination-in-chief within one week and the suit posted for 28th February, 2017.

19. It was in the aforesaid circumstances that on 28th February, 2017, the learned Joint Registrar closed the evidence of the plaintiff noticing that no witness was present.

20. On enquiry, it is confirmed by the counsel for the plaintiff that K.D. Sharma whose affidavit by way of examination-in-chief had been filed was also not present on that date.

21. Notwithstanding the evidence of the plaintiff having been so closed, the plaintiff still did not take any action and as aforesaid has filed this Chamber Appeal along with an application for condonation of delay of 163 days in filing thereof.

22. The aforesaid does not show any error in the discretion exercised by the learned Joint Registrar for closing the evidence of the plaintiff and the

plaintiff cannot, after filing the suit, keep it pending *ad infinitum* and be negligent, as has emerged from the aforesaid.

23. However, the plaintiff being an institution of repute, I have nevertheless enquired from the counsel for the plaintiff the nature of the dispute.

24. What emerges is that the plaintiff had placed orders on defendant no.1 M/s Hewlett Packard (I) Sales Pvt. Ltd. for supply of 175 computers for its doctors and paid a sum of Rs.95,10,238/- for the same to the defendant no.2 Amtrak Technology Pvt. Ltd., being the agent of defendant No.1. The claim of the plaintiff in this suit is that all the computers supplied were obsolete and unmarketable.

25. The plaintiff has thus sought recovery of the price paid along with interest.

26. During the hearing, it has also emerged that the defendant no.2 also instituted a suit in this Court against the plaintiff for recovery of interest for the delay in payment of price and which suit, upon enhancement of minimum pecuniary jurisdiction of this Court, was transferred to the District Court and has been decreed against the plaintiff for Rs.35 lacs approximately and an appeal is stated to have been filed by the plaintiff against the said decree.

27. I have enquired from the counsel for the plaintiff, whether not the claim made by the plaintiff in this suit was the defence of the plaintiff in the suit which has been decreed against the plaintiff.

28. Though the counsel for the plaintiff is unable to answer but the counsel for the defendant no.2 confirms.

29. The defendants no.3&4 are informed to be the officials of the plaintiff involved in the said purchase.

30. On enquiry, it is informed that the defendant no.3 has retired and the defendant no.4 is still working with the plaintiff.

31. On further enquiry, whether any administrative action was taken by the plaintiff against the defendants no.3&4 for dereliction of duty in the matter of purchase, the counsel for the plaintiff states that the plaintiff is contemplating to do so.

32. This suit itself is pending since the year 2010 and if the plaintiff has not taken any action till now, it appears that this suit in any case is dead wood and the plaintiff is spending good monies for a bad cause and will suffer rather than gain from keeping this suit pending.

33. The plaintiff on merits also has no case in the Chamber Appeal.

34. Dismissed.

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35. The onus of all the issues framed in the suit being on the plaintiff and the plaintiff having failed to lead any evidence, this suit has to necessarily fail and is dismissed. I am however refraining from imposing costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

NOVEMBER 27, 2017

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