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

Decided on: 14th December, 2017

\+ CM(M) 390/2015, CMs No.8033/2015, 26607/2015

M/S SAMAR POLYTEX PVT LTD ..... Petitioner
Through: Mr. Ajay Kumar, Advocate

versus

BRIJ MOHAN GUPTA ..... Respondent
Through: Mr. R.S. Kela, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petition at hand challenges the order dated 12th February, 2015 of the Court of Civil Judge whereby the application of the petitioner under Section 151 read with Section 141 of the Code of Civil Procedure, 1908 (CPC) registered as M.No.28/2014 was dismissed.

2. It is necessary to trace the backdrop of these proceedings, albeit briefly. The respondent had instituted a civil suit against the petitioner seeking money decree in the sum of Rs.1,55,000/-. The petitioner (hereinafter referred to as 'the defendant') was admittedly summoned in the said suit of the respondent (hereinafter referred to as 'the plaintiff') and appeared in response to the summons and filed his written statement putting in his contest. It appears that the defendant had also instituted a civil suit against the plaintiff which was pending

around the same time in another Court. In the civil suit at hand, the defendant, after filing the written statement, chose to suffer the proceedings *ex parte* at the stage of trial after issues had been framed on 14th December, 1998. The case had reached the stage of final arguments, the plaintiff having completed his *ex parte* evidence, when the civil court (then presided over by additional district judge) by order dated 9th April, 1999 recorded the view that the proceedings in this suit be stayed till decision was rendered in the other suit which had been brought by the defendant. Thus, the proceedings in this case were stayed *sine die* with liberty given for revival after decision had been rendered in the other case.

3. It is admitted that the suit instituted by the defendant against the plaintiff of the present case was dismissed, the said judgment having become final and binding. The plaintiff thus moved an application for revival of the proceedings in his suit (at that time registered as suit No.856/1997). By order dated 24th February, 2005, the additional district judge noted that notice earlier issued on the application for revival had been duly served on the defendant, but he had not appeared. He, thus, allowed the application for revival, restoring the case to its original number but, by abundant caution, directed fresh notice to issue to the defendant about the revival of the proceedings in the Suit.

4. The copies of the proceedings recorded in the wake of the above order would reveal that on account of change of the pecuniary jurisdiction, in terms of report made on 25th January, 2006 by the

additional district judge, the concerned district judge later made over the case to the court of civil judge where the file came up for consideration for the first time on 1st February, 2006. The civil judge noted the previous proceedings and directed fresh notice to issue to the defendant. On 15th April, 2006, it was recorded by the civil judge that the report received earlier on record would show that the defendant had been served on 1st October, 2005 but he had chosen not to appear or contest. This observation is confirmed by copy of the acknowledgement card that had been returned by the postal department against the postal article whereby notice had been issued for 1st October, 2005, the acknowledgement card confirming its delivery at the correct address of the defendant, the receipt having been acknowledged by a person named Pankaj. The civil judge proceeded ahead noting further the fact that the defendant had suffered the earlier proceedings also *ex parte*. On the basis of *ex parte* arguments advanced, she rendered her decision in the case by judgment dated 24th August, 2006, granting decree as prayed by the plaintiff.

5. The defendant moved an application under Order IX Rule 13 CPC on 15th September, 2008 mainly pleading that it had not been served upon him, attributing manipulation and playing of tricks to obtain the *ex parte* decree. The application remained pending but not diligently prosecuted. It eventually came to be dismissed in default of appearance by order dated 18th October, 2011, the said order revealing that the default had been regular and consistent for several dates.

6. Against the aforesaid backdrop, another application was filed now invoking Section 151 read with Section 141 CPC submitted on 23rd November, 2012, thus more than a year after the dismissal in default of the earlier application under Order IX Rule 13 CPC, the default being attributed partly to the counsel and partly explained for reasons of other preoccupations of Mr.Naresh Bhatia, Director of the company who, as per the submissions, was constrained to be on official travels too frequently. The application was listed on several dates but with no interest shown by the defendant for its effective hearing. Eventually, by virtue of the preceding order, the application was taken up by the civil judge on 12th February, 2015, it having been clarified in the last order that this was the last and final opportunity for the defendant to argue. Conspicuously, there was again absence of the defendant/applicant. In the application, reference had been made to Article 137 of the Limitation Act to plead that the application could be maintained within the period of three years. The learned civil judge found this submission to be incorrect and referring to Article 122 in the Schedule to the Limitation Act, recorded that the application was badly time barred as it should and could have been filed within the period of 30 days only. Be that as it may, even the grounds set out in the application did not impress the Civil Judge. He thus dismissed the application.

7. The facts and circumstances noted above clearly reveal that the defendant has just been dragging feet. The default in appearance at several stages of the proceedings has remained unexplained. In

absence of any application seeking condonation of delay, the application which was dismissed by the impugned order even otherwise could not have been entertained.

8. Thus, the impugned order does not suffer from any illegality or infirmity. The petition is dismissed with costs of Rs.25,000/-.

R.K.GAUBA, J

DECEMBER 14, 2017
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