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

+ **FAO(OS) 287/2016 & CM No. 36445/2016 (stay)**

V K KAUSHIK Appellant
Through Mr. Aseem Mehrotra, Advocate

versus

NATIONAL SMALL INDUSTRIES CORPORATION LTD & ORS
..... Respondent

Through Mr. Sanjoy Kumar Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **17.04.2017**

Mr. V.K. Kaushik, the appellant impugns the order dated 29.8.2016 whereby IA No. 10510/2016 under Order XXXVII, Rule 4 of the Code of Civil Procedure, 1908 (Code, for short) and IA No. 10511/2016 for condonation of delay of 1075 days in applying for leave to defend have been dismissed.

2. The appellant was served with summons for appearance in CS(OS) No. 1164/2002, filed by National Small Industries Corporation Limited against Myson Electronics Private Limited and four others including the present appellant. The appellant was sued as a guarantor. The suit was for recovery of Rs. 78,49,274.89/-

alongwith interest @ Rs.18% p.a. with effect from 1.6.2002.

3. The appellant had entered appearance as postulated by Rule 3(i) of Order XXXVII of the Code, albeit did not submit any address for service of summons, notices or judicial processes as required by sub-rule 1(3) of Order XXXVII of the Code.

4. The National Small Industries Corporation Limited thereafter took out summons for judgment to be served on the address given in the plaint on 19.8.2009. The summons for judgment could not be served as the appellant had shifted and moved from the said address. This is an accepted and admitted position. The appellant had failed to furnish and place on record his new address.

5. The appellant was treated as served under sub-rule 2(3) to XXXVII of the Code, and as no application for leave to defend was filed, decree was passed vide order dated 13.8.2013.

6. The appellant on 22.8.2016 filed the aforesaid applications i.e. IA 10510/2016 and 10511/2016 under Rule 4 of Order XXXVII of the Code and for condonation of delay of 1075 days.

7. In our opinion, the learned Single Judge has rightly dismissed the applications.

8. The appellant had entered appearance in the CS(OS) No. 1164/2002 titled ***National Small Industries Corporation Limited vs. Myson Electronics Pvt. Limited & Ors.*** on 4.2.2003. He had also engaged and appointed an Advocate. We fail to understand and would not accept that the appellant did not get in touch with his counsel from 2003 till 2013 or rather 2016. He knew and was aware that the civil suit under order XXXVII for recovery of Rs. 78,49,274.89/- with interest was pending. Ignorance is not pleaded or claimed. It is apparent that the appellant deliberately and intentionally did not place on record his fresh and new address, to take up the issue and reopen proceedings subsequently.

9. Learned counsel for the appellant submits that vide order dated 10.5.2011 of the Joint Registrar summons for judgment were directed to be issued at the address of his Advocate mentioned in the Vakalatnama. The order dated 10.5.2011 passed by the Joint Registrar records that summons for judgment may be issued against the appellant at the address mentioned in the Vakalatnama, without prejudice to the rights and contentions of the parties. Thus, it would not be correct to say that the contention of the plaintiff regarding

service of the summons for judgment were prejudiced or this order in any manner revived the rights of the appellant to fresh service. Further, pursuant to the order dated 10.5.2011 another attempt was made to serve the summons for judgment. The order sheet dated 25.7.2011 records that summon for judgment sent to the appellant through counsel was also received back with the remark that no such person resides at the given address. The appellant does not convert this position and the counsel states that he has not examined the court file.

10. Be that as it may, we do not think that this is a case which requires interference. The Civil Suit under Order XXXVII was filed more than 14 years back in 2002. The appellant had entered appearance in 2003. The application for leave to defend and condonation of delay in filing the leave to defend was filed only in 2016. The appellant did not bother to inform the Court the new address. The plaintiff in terms of the provisions of the Code had sought service of summon for judgment at the address given in the plaint, in the absence of any new or different address given by the appellant upon service of summons for appearance. The appellant

must face the consequences of his lapses and defaults. Accepting the appeal would set back the clock by more than 3 years, for no fault attributable to the plaintiff. Indulgence to the appellant is unwarranted and unjustified.

11. We do not find any merit in the present appeal and the same is dismissed. No costs.

SANJIV KHANNA, J

ANIL KUMAR CHAWLA, J

APRIL 17, 2017
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