

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

+ **FAO No. 375/2017**

% **18<sup>th</sup> September, 2017**

M/S VIDHI AGENCIES THROUGH ITS PROPRIETOR RAKESH  
KUMAR GAGNEJA ..... Appellant

Through: Mr. G.S. Gangwar, Advocate.

versus

M/S KARNATAKA SOAPS & DETERGENTS LTD. .... Respondent

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

**C.M. Appl. No. 34258/2017 (for exemption)**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**FAO No. 375/2017 and C.M. Appl. No. 34259/2017 (for stay)**

1. This is a first appeal filed under Order XLIII(1)(d) Code of Civil Procedure, 1908 (CPC) impugning the order of the trial court dated 25.8.2017 by which the trial court has dismissed the application filed by the appellant/defendant under Order IX Rule 13 CPC and refused to set aside the *ex-parte* judgment and decree dated 21.1.2015.

2. By the *ex-parte* judgment dated 21.1.2015 the suit was decreed against the appellant/defendant for a sum of Rs.4,57,902/- along with interest on account of goods having been supplied by the respondent/plaintiff to the appellant/defendant and with respect to which a cheque was issued for a sum of Rs.5,52,172/- dated 17.8.2009 drawn on Indian Overseas Bank but that cheque was dishonoured. Trial court after considering the evidence passed the *ex-parte* judgment and decree dated 21.1.2015 and the relevant paras of that judgment being paras 4 to 6 read as under:-

“4. To prove its case, the plaintiff company has examined Shri Amal Ghosal, Attorney, as PW.1. He has deposed on affidavit Ex.PW.1/A and has reiterated the pleas taken by them in the plaint and got exhibited documents from Ex.PW.1/1 to Ex.PW.1/5 ( all collectively) i.e resolution, power of attorney, statement of account, legal notice and receipts thereof. copies of remainders/e-mails, legal notice and post receipts thereof. In his additional affidavit Ex.PW.1/C, he has further got exhibited documents Ex.PW.1/6 to Ex.PW.1/29 i.e tax invoices, vat invoices, and goods receipts (GR).

5. I have heard Ld. Counsel for the plaintiff and have perused the material placed on record.

6. To ascertain as to whether the plaintiff has succeeded in proving its case or not, a look has to be made to the testimony of Shri Amal Ghosal, PW.1, and the documents got exhibited in his testimony.

Firstly, the documents got exhibited by him are taken up. If a look is made to Ex.PW1/6 to Ex.PW.1/29 which were the various tax invoices, vat invoices and goods receipts (G.R), it comes out that the defendants were having business dealings with the plaintiff. Ex.PW.1/2A was the original cheque for a sum of Rs.5,52,172/- issued by the defendants to the plaintiff, however, the same was dishonoured and Ex.PW.1/3( collectively) certified statement of account shows an outstanding amount of Rs. 4,57,902/- after adjustments.”

3. Appellant/defendant filed the subject application pleading that he only came to know about the *ex-parte* judgment and decree in around February 2016 on receiving notice of execution proceedings because though they were served in the suit but the counsels who had appeared for them did not inform to them about the status of the case. It is seen that summons were served upon the appellant/defendant on 17.7.2012 and the appellant/defendant were proceeded *ex-parte* on 16.2.2013. After service the appellant/defendant appeared in the suit though their counsel on 18.2.2013. Appellant/defendant is said to have moved an application for setting aside the *ex-parte* order dated 16.2.2013 and which was allowed vide order dated 13.8.2013 with directions to file the written statement, and since the written statement was not filed, appellant/defendant was again proceeded *ex-parte* on 9.10.2013.

4. Learned counsel for the appellant/defendant has argued that the Advocates of the appellant/defendant have put the appellant/defendant under a misconception by not informing the appellant/defendant about the status of the case and in fact even the application filed for setting aside the *ex-parte* order dated 16.2.2013 was supported only by the affidavit of the counsel for the

appellant/defendant and not the appellant/defendant. It is therefore argued that for the fault of the counsel of the appellant/defendant, the appellant/defendant cannot be held responsible.

5. It is seen that the appellant/defendant was admittedly served in the suit for 17.7.2012 and had thereafter appeared in the suit on 18.2.2013, whereas the subject application under Order IX Rule 13 CPC was filed after 399 days of passing of the *ex-parte* judgment and decree dated 21.1.2015. Therefore, from 17.7.2012 till moving of the application after 399 days from 21.1.2015 it is to be seen if there is any correspondence or any form of communication in writing between the appellant/defendant and his counsels. Trial court has, accordingly, held that appellant/defendant cannot conveniently shift the blame upon his counsels because now-a-days it is routine for the litigants to blame their counsels. Trial court has also noted that appellant/defendant was under obligation to contact his counsel, and once the period is as long as from July 2012 till about February 2016 when the application under Order IX Rule 13 CPC was filed, the appellant/defendant did not contact his counsel, hence, the appellant/defendant is not justified in throwing the blame upon his counsels specially when all the orders and proceedings of the courts are regularly uploaded on the website of

the District Court and any ordinary person can easily find out about the status of the case, including the appellant/defendant who claim to be living at Jalandhar in Punjab and not at Delhi. Relevant paras of the impugned order of the trial court are paras 9 to 12 and the same read as under:-

“9. A bare perusal of the record would show that the conduct of the defendant in prosecuting his case since the beginning has been careless and negligent. The defendant cannot shift the entire blame on his previous counsels without taking any responsibilities on his shoulders. A litigant is expected to remain vigilant during the proceedings of his case and his duty does not come to an end by merely entrusting his case to a lawyer. Defendant is required to keep himself updated about the proceedings in the case and cannot be expected to take a backseat or adopt lethargic or indifferent attitude.

10. In *Lachman Dass Vs. FCI 2007 (3) RCR (Civil) 340 (Punjab and Haryana)*, it was held that merely by engaging a Counsel, the petitioner does not get any immunity from prosecuting his case by appearing in the Court. It was for the petitioner to have looked after his interest in the case by personal appearance or by ensuring the appearance by his duly instructed Counsel.

11. In the present case, even though the defendant has shifted the entire blame on his previous Counsels, it is surprising that defendant has not taken any action against them for their professional misconduct/incompetence. If the previous Counsels for the defendant had acted negligently, the defendant ought to have made complaints to the Bar Council against them but no such complaints have been placed on records. In the absence of any such material on record to show that defendant, being aggrieved by acts/omissions of his previous counsels, had taken some action against them, I am not inclined to believe the version of the defendant. It has become very common practice amongst the scrupulous litigants to blame their previous counsels for their own negligence in order to seek sympathy of the Court. Once the defendant had been duly served with the summons of the suit, it was his under a duty to prosecute his case negligently and if he has failed to do so, no one else can be blamed for it. Now a days, a litigant if he is little vigilant can enquire about the status of the case on the Internet itself without having to travel to distant place from his home. All the orders and proceedings are regularly uploaded on the website of the District Judiciary and any ordinary person can easily find out status of his case. The defendant is living in Jalandhar which is a well developed city having all the facilities of internet etc. and it cannot be said

that defendant was solely dependent on his counsels for knowing about the status of his case.

12. The defendant has also not given any explanation as to why the appeal was not filed within the period of limitation of 30 days from the date of alleged knowledge of passing of the decree on 03.02.2016. The present application has been filed by the defendant only on 09.03.2016 and there is no application for condonation of delay in filing the application. In the absence of any application for condonation of delay giving sufficient cause, the delay in filing of the application cannot be condoned.”

(underlining added)

6. In my opinion no fault whatsoever can be found with the reasonings and conclusions contained in paras 9 to 12 of the impugned order of the trial court and also noticing that the appellant/defendant is the purchaser of goods and who had issued cheque which was dishonoured and which resulted in the *ex-parte* judgment and decree dated 21.1.2015.

7. There is no merit in the appeal and the same is hereby dismissed.

**SEPTEMBER 18, 2017**

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**VALMIKI J. MEHTA, J**