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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4103 OF 2017

M/s Mic Electronics Ltd.	...	Petitioner.
V/s.		
M/s Fortune Couriers Ltd.	...	Respondent

Mr. Ashok B. Tajane, for petitioners
Mr. Sudeshna Guha Roy i/by Vidhi Partners, for
respondents

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rdMAY, 2018.

P.C. :

1] Heard learned counsel for the petitioners and learned counsel for the respondents.

2] By this writ petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 27.01.2017, passed by City Civil Court, Mumbai, thereby making Notice of Motion No.1557 of 2016 absolute subject to costs of Rs.20,000/- payable to the original plaintiff and set aside the judgment and decree passed on 20th February, 2013, in Summary No. 4037 of 2010, subject to depositing an amount of Rs.5 lacs in the Court till 20.2.2017.

3] The said Notice was taken out by the petitioner herein for

condonation of delay of 125 days in filing the Notice of Motion for setting aside the exparte judgment and decree.

4] According to learned counsel for the petitioner, the trial Court should have only decided said Notice of Motion and condoned the delay. Accordingly, the trial Court has rightly condoned the delay by imposing costs of Rs.20,000/-, which the petitioner has already deposited in the trial Court. However, the trial Court has also, in the same order decided another Notice of Motion which was yet to be numbered and set aside the judgment and decree passed exparte on 20.2.2013. The petitioner has no grievance about it, but his grievance is that while doing so, the trial Court has directed the petitioner to deposit some portion of the suit claim that is Rs.5,00,000/-. The petitioner is aggrieved thereby and has filed the present petition.

5] It is submitted by learned counsel for the petitioner that without hearing the petitioner as to whether there was necessity of imposing this condition of depositing amount of Rs.5,00,000/- and even before hearing the Notice of Motion for setting aside the exparte decree, as the trial Court has passed said order, it needs to be quashed and set aside

6] Per contra, learned counsel for respondent has supported the impugned order, and in my considered opinion, rightly so. As regards the Notice of Motion for condonation of delay, there is no

grievance. It was rightly made absolute by imposing costs of Rs.20,000/-.

7] As regards the next Notice of Motion for setting aside the exparte judgment, the trial Court has allowed the same also and naturally, it has to be allowed subject to deposit of major portion of the amount due, considering that the exparte judgment and decree was passed in the year 2013 and only after the Execution Proceeding was filed and notice of attachment was issued, this Notice of Motion was filed to set aside that exparte judgment and decree. Even assuming that the petitioner therein was not heard on that aspect, considering the facts of this case, I do not find any reason to interfere in the order passed by the trial Court.

8] The Writ Petition, therefore, stands dismissed being without merits.

9] At this stage learned counsel for the petitioner seeks extension of stay to the execution of the exparte decree which was granted by the trial Court, when application for condonation of delay was filed.

10] Learned counsel for respondent opposes the said prayer and in my considered opinion, having regard to the fact that exparte decree is passed in the year 2013 and this is the year 2018, without complying the condition of depositing the amount, as ordered by the

trial Court, no such stay can be extended.

11] At this stage, learned counsel for the petitioner submits that the petitioner will deposit the said amount within four weeks and till then stay may be extended.

12] Accordingly, stay is granted to the execution of the exparte decree for a period of four weeks subject to condition that the petitioner deposits the amount as ordered by the trial Court, within the period of four weeks from today. On failure of the petitioner to do so, the order of stay will stand automatically vacated without further reference to this Court.

[DR.SHALINI PHANSALKAR-JOSHI, J.]