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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (St.) No. 12663 OF 2018
WITH
CIVIL APPLICATION (St.) No. 12664 OF 2018

M/s. Ind Swift Limited

... Appellant
(Orig. Defendant)

Vs.

M/s. Gandhar Oil Refinery India Ltd.

... Respondent
(Orig. Plaintiff)

Mr. Amit Shroff, for the Appellant.

Mr. Charls D'Souza a/w Mithila Damla, Aneesa Cheema I/b Verus, or
the Respondent .

CORAM : V. M. DESHPANDE, J.

DATE : JUNE 18, 2018

PC :-

1. Heard the learned counsel for the Appellant and the learned counsel for the Respondent. Present appeal is instituted against the order passed by the learned Judge of the City Civil Court, Mumbai, rejecting Notice of Motion No. 2673 of 2017 taken out in Summons for Judgment No. 295 of 2015 by the original defendant, thereby the Court below rejected the said motion for condonation of

delay caused in filing the reply to the summons for judgment.

2. According to the learned counsel for the Appellant, the defendants though put up their appearance in the suit, did not seek leave to defend the suit on account of operation of order passed under the Sick Industrial Companies (Special Provisions), Act, 1985 (for short “SICA”). According to the defendants, during pendency of the suit, a reference was filed before the Board of Industrial and Financial Reconstruction (for short the “BIFR”) and after the said reference was brought to the notice of the court below, the matter was adjourned to notice of the court below on 22.2.2016. It is also submitted that after SICA was repealed, the defendant withdrew the Application (Exhibit 10) for say on 22.6.2017, and therefore, there was a delay of only 39 days in the matter, which ought to have been condoned by the court below.

3. According to the original plaintiff, the delay is not of 39 days, as it has not been properly calculated. According to the plaintiff, the delay cannot be calculated from 22.6.2017. According to the plaintiff, there is delay is of 232 days and the said delay has remained unexplained, apart from the fact that it is an inordinate delay.

4. Exhibit 10 was filed by the defendants before the court below for stay. In view of the reference made to the BIFR, it was ultimately withdrawn on 22.6.2017. It is to be noted that SICA was repealed and the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 was brought into effect on 1st December, 2016, repealing all the proceedings pending before the BIFR on 1st December, 2016 with immediate effect. In that view of the matter, the plaintiff was right in canvassing that the delay will have to be calculated from 1st December, 2017, and not from 22.6.2017 as sought to be canvassed by the defendant.

5. The suit is filed under Order 37 of the Code of Civil Procedure, 1908 in which the defendant does not have right to defend the suit unless leave is granted to it. A special procedure is prescribed therein for conduct of the suit, including passing of the decree, and even an application for setting aside an ex parte decree. The procedure has to be followed strictly. In the present case, no explanation, whatsoever of any nature, is offered in respect of the delay from 1st December, 2016 till 22.6.2017. In my view, the court below has correctly considered the controversy involved and passed

the impugned order, which in my view, does not suffer from any perversity or illegality. Consequently, appeal is dismissed with no order as to cost. Since appeal is dismissed, pending civil application does not survive, and is accordingly disposed of.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath