

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL (lodg) NO. 351 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO.303 OF 2017

Inspiration Publication (India). ...Appellant

In the matter between
Inspiration Publication (India). ...Appellant

vs.

Thinkink Print Solutions L.L.P. ...Respondent

WITH
NOTICE OF MOTION (LODG) NO.772 OF 2018

Mr.Karl F.Tamboly with Mr.Malcolm Siganporia and Mr.Rachit Lakhmani I/b.
VIS LEGIS LAW PRACTICE, for the Appellant.

Mr.Arshil Ajay Shah with Mr.Harit Lakhani I/b. Sudhir Shah & Associated, for
the Respondent.

**CORAM : NARESH H. PATIL ACTING CJ &
G.S. KULKARNI, J.**

DATE : 13th August, 2018

P.C.:

1. This appeal arises out of the order dated 4th July,2018 passed by the learned Single Judge in Commercial Summary suit no.303 of 2017.

2. The learned Counsel submits that on 26th June,2018 this Court has pronounced the order of dismissal of Appeal (lodg) No.277 of 2018 which was filed by the appellant/defendant which arose from a

conditional order passed by the learned Single Judge on the summons for judgment. It is further submitted that the order was uploaded on 3rd July,2018. A notice of motion was thereafter preferred by the appellant and moved on a praecipe dated 3rd July,2018 which was kept on 4th July,2018 before this Court seeking extension of time for deposit of money as directed by the learned Single Judge. It is submitted that this Court did not pass any order, permitting the appellant to move the learned Single Judge. Before the learned Single Judge on the same day the suit was placed for passing ex-parte decree. The learned Counsel Mr.Tamboly submits that a draft notice of motion was tried to be submitted before the Court, seeking extension of time to deposit the amount. The learned Counsel submits that the learned Single Judge refused to consider the said draft notice of motion, consequently no order was passed on the said notice of motion and the impugned order came to be passed.

4. The learned Counsel submits that a cheque of Rs.95,00,000/- in favour of the Prothonotary and Senior Master of this Court drawn on HDFC Bank is ready which be permitted to be deposited with the Prothonotary and Sr.Master of this Court, so that the appellant would be in a position to file written statement to contest the suit on merit.

5. The request is objected by the learned Counsel for the

respondent. The learned Counsel submits that the appellant has deliberately delayed the steps. The steps ought to have taken consequent to dismissal of appeal by this Court. The conduct of the appellant clearly demonstrate that the appellant deliberately delayed to comply with the order passed by the learned Single Judge.

6. We have perused the record as also the impugned order passed by the learned Single Judge.

7. Taking into consideration the relevant facts and circumstances, we find that an opportunity to defend the suit need to be granted to the appellant herein i.e. original defendant. True it is that the appellant who now intends to deposit the principal amount of Rs.95,00,000/- ought to have shown diligence at appropriate stage but at the same time, the appellant may be permitted to do so now on imposing some condition. The learned Counsel for the appellant submits that he is even willing to deposit cost of Rs.2,00,000/- to be paid to the respondent for the delay caused in depositing the amount. We therefore, feel it appropriate that on appellant depositing alongwith the cheque of Rs.95,00,000/- with the Prothonotary and Senior Master of this Court, an amount of Rs.2,00,000/- (Rupees Two lakhs only) towards cost to be paid to the other side by 20th August,2018, the defendant be granted an opportunity to defend the suit.

8. For the reasons stated above, the impugned order is stayed on a condition that a cheque of Rs.95,00,000/- be deposited by the appellant-defendant with the Prothonotary and Senior Master of this Court today itself, and a cost of Rs.2,00,000/- be paid by way of cost to the respondent directly by 20th August,2018. On compliance leave to defend the suit is granted to the appellant.

9. In case of failure to comply with the conditions, the impugned order would stand and the appeal shall stand dismissed.

10. Liberty is granted to the respondent to apply before the learned Single Judge for withdrawal of the amount of Rs.95,00,000/-. In case such an application is filed, the learned Single Judge would deal with such notice of motion on its own merit.

11. The appeal is disposed of in the above terms.

12. As appeal is disposed of, the pending notice of motion does not survive, it is accordingly disposed of.

Prashant
Vilas
Rane
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signed by
Prashant
Vilas Rane
Date:
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G.S. KULKARNI, J.

ACTING CHIEF JUSTICE