

\$~29

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

+ **FAO 205/2018, CM APPL. 18876/2018, CM APPL. 18878/2018**

AMITEX POLYMERS PVT LTD Appellant

Through: Ms. Neelam Rathore, Advocate.

versus

JINDAL PLAST (INDIA) Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **08.05.2018**

CM APPL. 18877/2018 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

FAO 205/2018, CM APPL. 18876/2018, CM APPL. 18878/2018

This appeal impugns an order dated 12.01.2018 passed by the learned ADJ, Delhi in CS No. 16 of 2013. It had decreed an amount of Rs.3,53,486/- with pendent-lite and future interest @ 24% per annum from the date of filing of the suit till its realization against the appellant.

The brief facts of the case are that the appellant supplied pipes to M/s Ganesh Udhyog, a sister concern of the respondent, vide Bill no. 670 for Rs. 3,23,123.55/- on 24.09.2008. On 29.07.2009, the respondent informed the appellant that the said amount shall be adjusted in a running account which is being maintained between the parties for *inter se* transactions between the appellant and the respondent/sister concerns of respondent. Meanwhile, the

appellant purchased goods worth Rs.5,75,776/- from the respondents (goods worth Rs.2,60,279/- and Rs.3,15,497/- on 27.04.2010 and 02.05.2010 respectively). Upon non-payment of the amount, the respondent filed the suit for recovery of the said amount against the appellant. The appellant had entered appearance through counsel. Subsequently, they abandoned the proceedings and chose not to participate in the trial. Accordingly, they were proceeded ex-parte. They claim that they got to know about the *ex parte* order on 05.09.2016 hence, they moved an application on 23.09.2016 for a review of the said order, which was dismissed on the following grounds:-

“ The only ground taken in the application is the miscommunication of the counsel engaged by the party. There is no pleading that if the counsel informed about the dismissal of the case then as to why the copy of the order of dismissal was not sought from him and if he failed to supply the same as to why the copy was not applied to the Court. It appears that the plea taken by the defendant in this regard is not true. The conduct of the applicant was also negligent and it cannot take shelter behind its advocate particularly, in the absence of any complaint made by it for the misconduct of the counsel.

Further, the defendant no. 1 is a company and there is no pleading that the person filing the present application has been duly authorized by its Board of Directors to move the application for setting aside the decree passed against it.

In the facts and circumstances, the plea taken by the applicant is not trustworthy and the conduct of the applicant is not bonafide and diligent, so, the application is dismissed.”

The learned counsel for the appellant states that because of mistake on the part of the lawyer, who was engaged to contest the case, the appellants have suffered an *ex-parte* order, however, there is nothing on the record to

show whether there was any communication between the appellant and the lawyer or whether they followed up with the counsel apropos the progress of their case. The appellant is a corporate body and is deemed to have a better understanding of legal proceedings since they are neither illiterate nor an uninformed litigant. However, they sat over their rights despite being accorded with due opportunity to participate in the proceedings and to lead evidence. Furthermore, the allegations against their counsel are not supported by any notice to him, or complaint to the police of the Bar Council concerned or otherwise any action having been initiated against him.

In view of the above, the appeal is without merits, hence, it is dismissed.

The pending applications also stand dismissed.

NAJMI WAZIRI, J

MAY 08, 2018

RW