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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IA NO. GA/6/2019
(Old No. GA 2845 of 2019)
WITH
CS /558/2001
In APO/302/2002

M/S. UJALA INDUSTRIES & ORS.
VERSUS
MOOTHEDATH PANJAN RAMCHANDRAN & ANR.

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

And

The Hon'ble JUSTICE ANIRUDDHA ROY

Date : 10th June, 2022.

Appearance:

Mr. Debnath Ghosh, Adv.

Mr. Tinkari Jana, Adv.

Mr. Gopal Das, Adv.

Mr. Sourav Jana, Adv.

Mr. Sayantan Basu, Adv.

Mr. K. K. Pandey, Adv.

Mr. Sreyash Basu Dasgupta, Adv.

Mr. Sarosij Dasgupta, Adv.

Ms. Enakshi saha, Adv.

The Court : This is an application for restoration of a trademark appeal dismissed for default. There is a delay of 133 days in filing the application.

It is very seriously opposed by Mr. Sayantan Basu, learned advocate for the respondents/ plaintiffs. He submits that this appeal was from an interim order dated 22nd February, 2002 in his clients' favour. The interim order is continuing for over 20 years. The purpose of keeping this appeal pending by the appellants/defendants is to delay

the trial of the suit. The appellants have taken no steps to get the suit ready for hearing. They have not filed their written statement all these years, learned counsel submits.

Very recently, they have taken out an application before the learned trial court for extension of time to file the written statement.

It is true that there is not sufficient explanation for the delay in filing the application for restoration. The appellants might have an advantage in keeping the appeal pending because they would have two opportunities – one in the appeal and one in the suit to contest the interim order.

Considering all the facts and circumstances, the situation now is that the suit is pending for 20 years with an order of injunction against the appellants/defendants, which is operative. Going strictly by the letters of law it would not be just to shut out the appellants from prosecuting their appeal on this delay. Nevertheless, in our view, restoration of the appeal should not result in disadvantage to the respondents.

Hence, the delay in filing the restoration application is condoned. The application, GA/2845/2019 is allowed. The appeal is restored to its original file and number.

Simultaneously, considering the length of time the appeal has been pending in this Court, we dispose of it by directing that the interim order is to continue till the suit is decreed or until further orders by the learned single judge, whichever is earlier.

We expedite the suit. We direct the appellants/defendants to file their written statement with a counter-claim, if any, subject to its maintainability by 15th June, 2022. Order for cross discovery by 30th July, 2022. The respondents/plaintiffs are at liberty to file an additional written statement dealing with the counter-claims by 15th July, 2022. Inspection forthwith.

The learned trial court is requested to try the suit as expeditiously as possible.

The appellants shall pay to the respondents' advocate-on-record costs assessed at 2000 GMs by 15th June, 2022.

Accordingly, the appeal and the application are disposed of.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

cs.