

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-20937-CII-2018 in/and
CR-7849-2017
Reserved on :-31.10.2019
Pronounced on:- 05.11.2019.

M/s Goyal Traders

.....Petitioner

Versus

M/s Brahmaputra Processors Private Limited.

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Argued by:- Mr. S.S. Arora, Advocate for the petitioner.

Mr. Kunal Vinayak, Advocate for the respondent.

SANJAY KUMAR, J.

This civil revision, under Article 227 of the Constitution, arises out of the order dated 30.05.2017 passed by the learned Civil Judge (Junior Division), Amritsar (hereinafter, 'the trial Court'), in Case No.20/2012/2016. By the said order, the trial Court refused to condone the delay in the filing of the application for restoration of the restoration application which was filed earlier to set aside the order dismissing the suit for default. In consequence, both the applications stood dismissed. Aggrieved thereby, the plaintiff in the said suit is before this Court.

Heard the learned counsel for the petitioner/plaintiff and the

respondent/defendant.

Parties shall hereinafter be referred to as arrayed in the suit.

The suit, Case No.RBT 3 dated 13.08.2003, was filed by the plaintiff for recovery of a sum of Rs.9,59,784/- (Rs. 7,21,642/- towards principal and Rs.2,38,142/- towards interest) along with further interest @ 12 % per annum. The case of the plaintiff was that the defendant was its customer and the suit amount was due and payable by it for purchases made on credit.

However, as there was no representation for the plaintiff on 23.10.2009, the trial Court dismissed the suit for default under Order 9 Rule 8 CPC. The plaintiff thereupon filed an application in Case No.126 dated 21.11.2009 to restore the suit. By order dated 16.11.2011, the trial Court dismissed this application for default as none appeared on behalf of the plaintiff. Thereupon, the plaintiff filed an application seeking restoration of the restoration application which was dismissed for default on 16.11.2011. Therein, it stated that it had been erroneously informed that the next date fixed for the hearing of the earlier restoration application was 18.03.2012 and was therefore unaware of the fact that the case was to be taken up on 16.11.2011. It also sought condonation of the delay in the filing of the restoration application on the ground that the delay was not at all intentional as the date of hearing was noted wrongly.

These applications were dismissed by the trial Court, vide the order under revision. Therein, the trial Court took note of the facts stated supra and observed that the conduct of the plaintiff all through showed that it was not interested in pursuing the case. The trial Court opined that the plaintiff had not proved its bonafides and due diligence as it was not in a position to establish as to what prevented it from appearing before the Court

on the relevant date. Holding so, the trial Court concluded that no specific grounds were made out to justify the non-appearance of the plaintiff, whereby the subject applications could be allowed. The application for condonation of delay as well as the application for the restoration of the restoration application were accordingly dismissed.

Shri S.S. Arora, learned counsel for the petitioner, would contend that the conduct of the plaintiff was not such that the trial Court should have non-suited it without examining its claim on merits.

Be it noted that, basing on the request of the learned counsel for leave to place on record the zimini orders passed by the trial Court prior to 23.10.2009, the matter was adjourned on 12.09.2018. Pursuant thereto, the plaintiff filed CM-20937-CII of 2018 in this revision seeking to place on record the zimini orders (Annexure P-6). The application is accordingly ordered and the zimini orders are taken on file.

As the trial Court rendered findings on the conduct of the plaintiff all through the suit proceedings apart from his failure to explain his absence on the relevant date and as this Court permitted the plaintiff to file the orders passed prior to the dismissal of the said suit, this Court deems it proper to go beyond the order under revision so as to examine the plaintiff's bonafides. Perusal of the aforestated zimini orders would demonstrate that after the filing of the evidence affidavit of PW-1 on 05.03.2007, the matter was adjourned to 24.04.2007 for cross-examination of the said witness. The witness was however not present on 24.04.2007 and the case was adjourned to 13.09.2007. On that date, the counsel for the plaintiff moved an application under Section 148 CPC and allowing the same, the trial Court

not present. The matter was adjourned to 10.03.2008. Again, on that date also, the witness was not present but the learned counsel for the plaintiff undertook to adduce its entire evidence on the next date of hearing. The case was accordingly adjourned to 11.04.2008. On that date, the witness was present but the counsel for the defendant sought an adjournment on the ground that she wanted to tender some documents which were not available. At her request, the case was adjourned to 20.05.2008. Again, the witness was present on 20.05.2008, but at the request of the counsel for the plaintiff, the case was adjourned to 29.07.2008. On that date, the witness was again present but the cross-examination could not go on as the counsel for the defendant sought time. The case was adjourned to 26.09.2008 and on that date, the witness was present but yet again, the counsel for the defendant sought an adjournment. This situation continued even on the next dates of hearing, viz., 11.12.2008, 06.04.2009 and 20.07.2009. On the next date thereafter, 11.09.2009, the witness was not present and the matter was adjourned to 23.10.2009 as a last opportunity. On 23.10.2009, as the witness was not present and none appeared for the plaintiff also, the suit came to be dismissed for default.

The aforestated facts would demonstrate that prior to the dismissal of the suit for default on 23.10.2009, the plaintiff was prosecuting the suit with reasonable care and caution. PW1 appeared on several dates but could not be cross-examined due to the adjournments sought on behalf of the defendant. Even after dismissal of the suit on 23.10.2009, the plaintiff was prompt and sought restoration of the suit by filing an application on 21.11.2009 itself. It was only thereafter that carelessness set in on its part. Not only was the restoration application dismissed for default

but there was delay thereafter in seeking restoration of the said restoration application.

However, the reason cited for this apparent carelessness was that the date of the case was given wrongly to the plaintiff and being under the impression that the case was coming up on 18.03.2012, the plaintiff took no steps on 16.11.2011 when the restoration application actually came up for hearing and was dismissed for default. This aspect was completely overlooked by the trial Court when it observed that the plaintiff failed to establish as to what prevented it from appearing on the relevant date. Trite to state, for the mistake of the counsel, the party cannot be penalized. That apart, as the suit claim is based on business transactions which would be founded on documentary evidence, the lapse of time owing to the stalling of the suit proceedings since 23.10.2009 may not have any impact. When the plaintiff approached the Court seeking relief on the strength of such business transactions, it would be appropriate and in the interest of justice that the said claim is adjudicated on merits rather than on technicalities.

This Court is therefore of the opinion that the trial Court erred in examining the matter only from a technical angle, losing sight of the fact that a litigant would ordinarily be entitled to have the *lis* decided on its own merits and in accordance with law. No doubt, unconscionable and unforgiveable lapses on the part of such a litigant may disentitle him from seeking such adjudication, but in the case on hand, the proceedings in the suit prior to its dismissal for default clearly manifest that the plaintiff was not careless or negligent. Therefore, the plaintiff would be entitled to have its claim examined on merits.

on the part of the plaintiff must necessarily have consequences. As the plaintiff is itself responsible for this 10 year gap in the suit proceedings, this Court is of the opinion that it would suffice in the interest of justice if the plaintiff is made to forego its claim for interest on the suit amount during this period, i.e., from 23.10.2009 till the date of this order, at the threshold without going into the merits of the case. That apart, the plaintiff would also be liable to pay costs to the defendant for the unnecessary litigation that the defendant had to go through in relation to these restoration exercises over the past decade. The plaintiff shall therefore pay costs to the tune of Rs.10,000/- to the defendant.

In the light of this comprehensive order on merits and so as to avoid further delay and the wastage of the precious time of the trial Court, this Court deems it appropriate to allow not only the condone delay application and the subject restoration application but also the earlier restoration application in Case No.126 dated 21.11.2009. The trial Court shall accordingly resume the suit proceedings upon proof of payment of costs being produced and endeavour to dispose of the suit as expeditiously as possible.

The order under revision is accordingly set aside.

The civil revision is allowed to the extent indicated above. CM-20937-CII-2018 is also allowed.

(SANJAY KUMAR)
JUDGE

November 05, 2019.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.