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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 6th September, 2019

+ FAO 428/2017

SONY INDIA PVT. LTD. Appellant

Through: Mr. Rahul Malhotra & Mr.
Varun Garg, Advs.

versus

ACCESSORIES WORLD CAR AUDIO PVT. LTD. & ORS.

..... Respondents

Through: Respondent no.3 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. In the course of proceedings arising out of civil suit (no. 827/2016) of the appellant seeking recovery of Rs. 89,39,728/- with interest *pendent lite* and future besides costs, originally instituted in this Court in 2015 but transferred to the district courts on account of change of pecuniary jurisdiction, the defendants had moved an application under Order XI Rule 1 read with Section 151 of Code of Civil Procedure, 1908 (CPC) praying for liberty to deliver the interrogatories to the plaintiff of the suit *i.e.* the appellant. It appears that the said application was contested, the arguments having been heard. The learned Additional District Judge then in *seisin* of the matter pronounced a detailed order on 28.07.2017 granting the prayer in the said application calling upon the plaintiff (appellant) to respond

to the interrogatories on oath within a period of ten days of the said order. It further appears that the case by that time had already entered the stage of plaintiff's evidence for which it was scheduled for 05.09.2017 by corresponding short order passed on 28.07.2017. The plaintiff's submission is that the evidence on affidavit had already come on record and it was only to be formally tendered.

2. On 05.09.2017, there was default on the part of the plaintiff, there being no appearance and also no compliance with the direction for response to the interrogatories. This led to the suit being dismissed in default and for non-prosecution.

3. The plaintiff's moved an application for restoration on 08.09.2017 taking a plea that there was default on the part of the counsel to ascertain the status and as to the next date of hearing, the order on the application for interrogatories to be served having been pronounced at the end of the day. The application was supported by the affidavits of the two counsel. It was resisted and eventually dismissed by the impugned order dated 24.10.2017, the trial judge apparently not being impressed with the grounds taken.

4. Feeling aggrieved with the said order dated 24.10.2017, declining restoration of the suit, the present appeal was filed.

5. Having heard the submission, this Court finds no good reasons as to why the case should not have been revived and restored. The suit which was instituted in the year 2015 was being prosecuted diligently by the plaintiff till the date on which the default occurred. The reasons for the default have been properly explained. The lack of knowledge on the part of the plaintiff occurring on account of lack of

proper vigilance on the part of the counsel cannot result in the suit which had reached at such stage being junked. Be that as it may, the opposite party will have to be suitably compensated.

6. The impugned order is set aside. The application for restoration is allowed subject to costs of Rs. 20,000/-. The suit shall be proceeded further in accordance with law by the trial court. The parties are directed to appear before the trial Judge on 14th October, 2019.

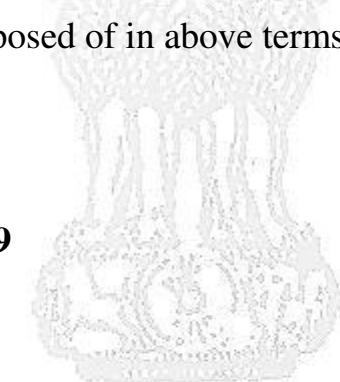
7. Needless to add, as a result of the revival of the proceedings in the civil suit, it will be the obligation of the appellant (i.e. the plaintiff of the suit) to abide by the directions for answering the interrogatories for which ten days' time from today is granted.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 06, 2019

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