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

Date of decision: 17th February, 2020

+ RFA(OS)(COMM) 48/2019

VIVEK KUMAR GAUTAM

..... Appellant

Through: Ms. Pooja Tandon, Adv.

versus

CITIGROUP INC & ORS

..... Respondents

Through: Mr. Chander M. Lall, Sr.
Advocate with Mr. Raghav Malik, Mr.
Abhishek Kotnala and Ms. Niharica
Khanna, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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17.02.2020

RFA(OS)(COMM) 48/2019

1. The present Regular First Appeal has filed under Section 13(1) of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 read with Section 10 of the Delhi High Court Act, 1966 arising from judgment and decree dated 2nd September, 2019, passed by a Single Bench of this Court in CS (OS) (COMM) 877/2017.

2. The impugned Judgment, allowed the Suit of Permanent Injunction preferred by Respondents 1 to 4 herein, thereby restraining the Appellant & Respondent No.5 herein from using the name 'CITI FINANCE SERVICES' for providing banking services, holding it to be deceptively and confusingly similar to the Respondent No. 1 to 4 registered trademark of 'CITI FINANCIAL' & its trading name 'Citicorp Finance (India) Ltd.' Moreover, awarded a cost of Rs. 29,43,396.06/- against Appellant & Respondent No. 5 i.e. 'Citi Finance Services' jointly and severally.

3. At this juncture a brief narration of facts is necessary.

4. According to the Appellant, he joined the office of Citi Solutions Pvt. Ltd. on 5th February 2012 and was thereafter transferred to Citi Finance Services, Muzaffarpur Branch, Bihar as Branch Manager (Operations) on 20th November 2016. According to the Appellant's submission, the Appellant resigned from the office on 4th August 2017. However, the Hon'ble High Court has noted that the Patna & Muzaffarpur Branch of the Respondent No.5 in the name of 'Citi Finance Services' was inaugurated on 15th November 2015.

5. On 16th December 2017, Respondent No.1 to 4 gained knowledge of the operational branch of Respondent No. 5 at Zero Mile Dadar Road, Muzaffarpur, Bihar being run by the Appellant and an another customer branch at Patna.

6. The Respondents preferred a suit for permanent and mandatory injunction for infringement of registered trademarks, passing off, dilution of

trademarks and unfair competition wherein the Court issued summons to Appellant & Respondent No. 5 vide order dated 21st December, 2017 which were duly served.

7. The Appellant was taken into judicial custody in another criminal matter on 23rd December, 2017.

8. The Appellant had entered an appearance before the Hon'ble Court on 14th December, 2018, when the Counsel for Appellant, furnished with all copies of the pleadings and proceedings and he was thereby directed to file replies to the pending applications and the written statement and matter was listed for 12th March 2019.

9. *Vide* Order dated 12th March, 2019, the Court had directed the Appellant to file the written statement within a period of 4 weeks from the date of the Order and the matter was listed for 26th April, 2019.

10. The Appellant was released from judicial custody on 18th March, 2019 & thereafter the Appellant appeared in Court on 26th April, 2019. The Court allowed an additional 30 days to the Appellant to file Written Statement and provide details of a Mr. Ankit Aggarwal, who the Appellant had claimed was the owner of Respondent No.5 firm, and was also the Director of the same. Moreover, the Appellant was confronted with the Facebook profile in his name which showed him as the Branch Manager at Citibank. On denial of the same having been created by the Appellant, the Court directed him to file the affidavit regarding the status of the Facebook account. The matter was thereafter listed for 23rd August, 2019.

11. On 23rd August, 2019, as the Appellant had failed to submit his written statement, the affidavit regarding the status of the Facebook account and details of Mr. Ankit Aggarwal, the Court while noting the numerous extensions granted to the Appellant closed the right of the Appellant to file a written statement.

12. Subsequent thereto, the impugned judgement was passed on 2nd September, 2019. Relying on the Facebook account of the Appellant, the photographic evidence of Appellant inaugurating the branch at Muzzafarpur, and the inability of the Appellant to tender any details of a Mr. Ankit Aggarwal, who the Appellant claimed was running Respondent No. 5, the impugned order held that the Appellant was indeed the one running Respondent No.5 firm.

13. We have heard, Ms. Pooja Tandon, learned counsel for the appellant and Mr. Chander M. Lall, Sr. Advocate, counsel for the respondents, at length.

14. The Ld. Counsel for the Appellant contends that the impugned judgment has erroneously held that the Appellant was at the helm of the affairs of Respondent No. 5 and it has been contested by the Counsel for the Appellant that the Appellant had resigned from the Respondent No. 5, on 4th September 2017 and was therefore not a necessary party to the suit and the same should have been instituted against the owner of the Respondent No. 5 firm.

15. The Ld. Counsel further contends that the photographs tendered by the Respondent No. 1 to 4 before the Single Bench of the Hon'ble High Court were forged.

16. Moreover, it was contended that the Court should not have closed the right of the Appellant to file the written statement as the Appellant had been judicial custody and after being released did not have resources to obtain legal advice/counsel.

17. Mr. Chander M. Lall, Sr. Advocate, vehemently contestets the arguments advanced by the counsel for the appellant.

18. Mr. Chander M. Lall, places reliance on *SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd.*¹, to contend that the failure to file the written statement beyond the stipulated period extinguishes the right of the party to do so.

19. We have heard the parties and perused the records.

20. We, therefore, believe this appeal ought to be dismissed, since the appellant has failed to file his written statement despite the learned single judge taking a lenient view and granting an extension of time, and thus his right to file the same stands forfeited.

21. The Hon'ble Supreme Court in *SCG Contracts India*¹, notes the amendments in the Code of Civil Procedure, 1908, effected by Commercial Courts, Commercial Division & Commercial Appellate Division of High

¹ (2019) 12 SCC 210

Courts Act, 2015. The relevant paras of the report merit reproduction, as under:

“8. A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.”

(Emphasis supplied)

22. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we see no reason to entertain this Regular First Appeal as no error has been committed by the learned Single Judge while deciding CS(OS)(COMM.) 877/2017 *vide* judgment and decree dated 2nd September, 2019. Hence, this Regular First Appeal is hereby dismissed.

CM Appl. No. 50252/2019 (stay)

In view of the above, this application is disposed of.

CHIEF JUSTICE

C. HARI SHANKAR, J.

FEBRUARY 17, 2020

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