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

+ **CM (M) 713/2018**

+ **CM (M) 714/2018 & CM APPL. 25564/2018**

OASIS PHARMA & PHYTOMOLECULES
PVT. LTD.

..... Petitioner

Through: Mr. Rohit Oberoi, Advocate.
(M:9810383816)

versus

MOHINDER PAL SINGH & ORS.

..... Respondents

Through: Mr. Pradeep Purohit and Ms. Neetika
Chaturvedi, Advocates.
(M:9891271240)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **06.01.2020**

1. These two petitions arise out of a suit for recovery of money filed by the Respondent No.1/Plaintiff – Mr. Mohinder Pal Singh (*hereinafter*, “*Plaintiff*”), who was the Vice-President (Marketing) of the Petitioner/Defendant No.1 - Oasis Pharma & Phytomolecules Pvt. Ltd (*hereinafter*, “*Defendant No. 1*”). Defendant Nos. 2 & 3 are the Chairman and Managing Director of the said company. The suit was filed in the year 2011 and the Defendants have also filed a counter claim. Sometime in May, 2017 the Defendant No. 3 moved an application under Order I Rule 10 CPC as there was a change in the composition of the company, including change of the authorised signatory. In the said application, the following order was passed by the Id. ADJ on 3rd May, 2017:

“Ld. counsel for the defendants filed an application under Order 1 Rule 10 (2) CPC on behalf of defendant

no.3 along with documents and Vakalatnama along with Board resolution. The same are taken on record. Copies given.

Put up this matter for reply and disposal of the application under Order 1 Rule 10 (2) CPC filed by defendant no.3, on 20.07.2017. Some competent official from the office of the defendants company to appear in person on the next date of hearing.

2. On the next date i.e. 20th July, 2017 the counsel for the Defendants did not appear, the matter was passed over once and at 2:30 pm the following order was passed.

“20.07.2017 (At 12:00 Noon)

*Present:- Plaintiff with Sh. Pradeep Purohit,
Ld. Counsel for the plaintiff.
None for the defendant.*

Case called twice but no one has responded for the defendant. Be put up again at 02:00 PM.

20.07.2017 (At 02:30P.M.)

*Present :- None for the plaintiff.
None for the defendant.*

No one has appeared on behalf of the defendant since morning despite various calls, accordingly, the application of the defendant no.3 under order I rule 10 (2) CPC is dismissed for non prosecution. The defendants herein are hereby proceeded against exparte. Put up for exparte evidence of the plaintiff on 16.10.2017.

.....”

3. The above order has been passed both in the suit, as well as in the counter claim. CM (M) 713/2018 challenges the order insofar it relates to

the counter claim and CM (M) 714/2018 challenges the order in respect of the main suit.

4. The submission of Id. counsel for the Defendants is that the matter was listed on 20th July, 2017 primarily for the application under Order I Rule 10 CPC, and in any event the counter claim could not have been dismissed in this manner for default of appearance of the counsel. It is further submitted that the record of the suit shows that though on some occasions, the Defendants had sought adjournments, the Defendants' counsel or the authorised representative of Defendant No. 1 have been present in the Court on most occasions. Thus, it is submitted that the counter claim being dismissed would cause enormous prejudice to the Defendants, and it is prayed that an opportunity may be given to the Defendants to defend the suit on merits as also to prosecute the counter claim on merits.

5. On the other hand, Id. counsel for the Plaintiff relies upon the observations of the Id. ADJ in the impugned order, which record that the Defendants have rarely appeared in the suit to argue and the Defendants have unnecessarily delayed the adjudication of the suit for the last eight years.

6. The Court has perused the order sheets. There is no doubt that the suit has not been proceeded diligently, however the Defendants have been represented on most occasions. Non-appearance on behalf of the Defendants cannot be said to be endemic and is at best sporadic. On some occasions the parties have sought adjournments at joint request.

7. The Trial Court has also passed a standard order both in the suit and in the counter claim, without appreciating that the matter was only listed for the application under Order I Rule 10 CPC. The dismissal of the counter

claim is a substantive dismissal and no reasons have been given for the said dismissal. Identical order has been passed in the suit and counter claim without appreciating that the Defendant cannot be proceeded ex-parte in its own counter claim.

8. The Defendants sought modification of the order dated 20th July, 2017 by filing applications under Order IX Rule 4 CPC and Order IX Rule 7 CPC on 20th September, 2017. The said applications have also been rejected. The delay in moving of the applications was not more than 4 weeks and accordingly, this Court is of the opinion that the Defendants ought to get an opportunity to contest the case on merits, and pursue their counter claim on merits, subject to terms.

9. Under these circumstances, the Defendants are directed to deposit a sum of Rs.3 lakhs before the Trial Court, which shall be retained in a fixed deposit as a condition for being permitted to pursue their counter claim and to defend the suit filed by the Plaintiff. The said deposit shall be made within a period of six weeks from today. Subject to the said deposit being made, the impugned orders are set aside. The Defendants are permitted to join the proceedings before the Trial Court from the stage at which they were on 20th July, 2017. Considering the vintage of the suit, the Trial Court shall endeavour to conclude the trial within six months, and adjudicate the suit and the counter claim within nine months from today.

10. With these observations, both the petitions and the pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 06, 2020/dk