

28.01.2021
SL No.29
Court No.12
(gc)

**FMAT 112 of 2020
With
CAN 1 of 2020
(Old No: CAN 1038 of 2020)**

**Shyam Bihari Sharma
Vs.
M/s. Laktaria (India) Pvt. Ltd.**

(Via Video Conference)

Mr. Pinaki Ranjan Mitra,
Mr. Anjan Datta,
Mr. Swarvanu Saha,
Mr. Sumon Pathak,
...for the Appellant.
Mr. Supratim Laha,
Mr. Binay Kumar Jain,
...for the Respondent.

Re: CAN 1 of 2020 (Old No: CAN 1038 of 2020)

We have heard the learned Counsel for the parties. There is a delay of 273 days in presenting the memorandum of appeal. We are satisfied with the explanation offered for not being able to prefer the appeal within time.

On such consideration, the application for condonation of delay being CAN 1 of 2020 (Old No: CAN 1038 of 2020) is allowed.

Since no affidavit-in-opposition is called for, the allegations made in the appeal are deemed to have been denied.

By consent of the parties the appeal is taken up and disposed of by this order.

The plaintiff filed a money suit against the defendant. After the settlement of the issues on 9th June, 2011, the suit was fixed for peremptory hearing. However, on that date, Mr. Bajrang Manot, learned Advocate appearing on behalf of the plaintiff/petitioner could not attend the Court as a result whereof the suit was dismissed for default at around 11.30 a.m.. However significantly, the appellant filed a petition on the very same date soon thereafter under Section 151 of the Code of Civil Procedure for recalling of the order and that petition was disposed of after six months on the ground that the said application is not maintainable and the petitioner was directed to file a fresh application. These two technical approaches on behalf of the Court in not restoring the suit and proceed with the trial of the suit had resulted in multiple applications being filed and the last of which is the application filed on 9th April, 2013 under Order 9 Rule 9 of the Code of Civil Procedure.

We are at a loss as to why the appellant did not file an appropriate application, however, at the same time we feel that the Trial Court was hypertechnical in not recalling its earlier order of dismissal of the suit when the fact remains that on the very same date, the learned Counsel representing the plaintiff rushed to the Court and made a prayer for restoration of the suit which, if allowed, would have resulted in disposal of the suit in the meantime.

In view of the fact that the issues have been settled and the trial could have commenced, had it not been

dismissed for default, we set aside the order under appeal and restore the suit with a direction upon the Trial Court to conclude the trial of the suit preferably within a period of six months from the date of communication of this order by either of the parties. We make it clear that the mercy that is shown upon the appellant by giving him an opportunity to prove his case should not be misused and the Trial Court should make a schedule for trial and hearing of the suit and such dates should be strictly adhered to by the parties unless there are unavoidable reasons to do so.

The learned Counsel for the appellant has assured us that the appellant shall be diligent in proceeding with the suit.

The appeal being FMAT 112 of 2020 is, accordingly allowed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Aniruddha Roy, J.)

(Soumen Sen, J.)