

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 1611 OF 2019

IN
COUNTER CLAIM NO. 8 OF 2016
IN
COMMERCIAL SUMMARY SUIT NO. 67 OF 2014

Rajesh Exports Ltd.

.. Applicant

In the matter between :

Rajesh Exports Ltd.

.. Plaintiff

Vs.

Multi Commodity Exchange of India Ltd.

.... Defendant

Mr.Sameer Pandit a/w. Mr. P. Kandar i/b Wadia Ghandy and Co. for plaintiff.

Mr.Dipen Furia i/b Shah and Furia Associates for applicant/plaintiff in counter claim No. 8 of 2016.

CORAM : N.J. JAMADAR, J.

DATE : 5th FEBRUARY 2021

P.C.

1. This notice of motion is taken out by the defendant/plaintiff to the counter claim No. 8 of 2016 in the commercial suit No. 67 of 2014 to set aside the order dated 25th June 2019, whereby the counter claim came to be dismissed for want of prosecution.

2. The principal reason assigned in the affidavit in support of the notice of motion is the alleged lapse on the part of the concerned associate of the advocate, who was entrusted to file vakalatnama on

behalf of the defendant-plaintiff to the counter claim, as the previous advocate had taken a discharge in the matter in the year 2016. The defendant was, thus, not aware of the listing of the matter before the Court. In the event, the counter claim is not restored, the defendant would suffer serious prejudice.

3. Heard the learned counsel for the applicant/plaintiff in counterclaim and the learned counsel for the plaintiff.

4. The order dated 25th June 2019 whereby the counter claim came to be dismissed records that the court had directed issuance of a notice to the defendant as the previous advocate had taken discharge and the said notice was duly served.

5. It is submitted on behalf of the defendant that after the service of the aforesaid notice, steps were taken by the defendant to appoint a new advocate. However, vakalatnama could not be filed in time.

6. The learned counsel for the plaintiff made an endeavour to demonstrate that the said claim of the defendant is not sustainable in the face of the documents on record.

7. The material on record thus indicates that there is an amount of indolence on the part of the defendant. However, it is trite that the *lis* ought to be adjudicated on merits rather than on technicality or for default. In any event, inadvertence or lapse on the part of the

advocate should not cause prejudice to the party. Moreover, there is no progress in the suit since the dismissal of counterclaim.

8. Thus, it would be in the interest of justice to give an opportunity to the defendant/plaintiff to the counter claim to prosecute the counter claim by construing the reasons assigned for non-appearance liberally. The delay and inconvenience caused to the plaintiff can be taken care by imposing costs.

9. Hence, the following order :-

O R D E R

(i) The notice of motion is allowed in terms of prayer clauses (a) and (b), subject to payment of costs of Rs.50,000/- by the defendant-plaintiff to the counterclaim No. 8 of 2016 to the plaintiff in Commercial Summary Suit No. 67 of 2014, within a period of two weeks.

(ii) The payment of costs shall be condition precedent.

(iii) Counter Claim No. 8 of 2016 stands restored to file.

(iv) The defendant to Counterclaim No. 8 of 2016 shall file the written statement within a period of six weeks from the date of the payment of the costs by the plaintiff thereto.

The notice of motion stands disposed of.

[N.J. JAMADAR, J.]

Shraddha
K. Talekar
Digitally
signed by
Shraddha
K. Talekar
Date:
2021.02.09
11:03:32
+0530