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

Date of Decision : 25.01.2021

+ **CM(M) 37/2021 & CM APPL. 1784/2021**
LIVEWELL AVIATION SERVICES PVT. LTD. THROUGH
ITS DIRECTOR, NEW DELHI Petitioner
Through: Mr.Arvind Kumar Sharma,
Adv.
versus
SHRI RAJESH CHAWLA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

1. This petition has been heard through video conferencing.
2. This petition has been filed by the petitioner feeling aggrieved of the order dated 10.02.2020 passed by the learned Additional District Judge-06, West District, Tis Hazari Courts, Delhi in M.No. 51/2019 titled *Shri Rajesh Chawla vs. Livewell Aviation Services Pvt. Ltd.*, dismissing the application filed by the petitioner herein under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the *ex parte* judgment and decree dated 07.03.2018.
3. By the judgment and decree 07.03.2018, the Suit filed by the respondent herein, being CS No. 8583/2016, was decreed in favour of the respondent allowing the claim of the respondent towards Service Tax alongwith interest. The petitioner thereafter filed an application on 12.12.2018 seeking setting aside of that decree. The said

application has however been dismissed by the learned Trial Court observing as under:-

“11. Prior to considering the said contention raised on behalf of plaintiff/respondent, it is relevant to note that in the present case plaintiff was cross examined on behalf of defendant and the case was at the stage of Defendant evidence when Defendant stopped appearing before the Court and the DE was closed on 09.08.2017 and thereafter, case was listed for final arguments.

12. On 16.10.2017, defendant was given an opportunity to file written arguments or to advance the arguments and thereafter, on 07.03.2018 judgement and decree was passed.

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18. Record of the case would reveal that present suit was instituted in September 2014 and Plaintiff evidence was closed on 13.01.2017 and case was fixed for Defendant evidence on 08.03.2017 and thereafter, case was listed for Defendant evidence on 28.04.2017. Defendant was directed to file evidence by way of affidavit with an advance copy to the counsel for plaintiff. It was also recorded that even list of witness was not filed. It is also relevant to mention that on 28.04.2017, direction was given to the Defendant to file the evidence by way of affidavit.

19. On 30.05.2017, opportunity was granted to the defendant to lead evidence and court notice was also issued to the defendant for 09.08.2017. On

09.08.2017, Defendant evidence was closed and the case was fixed for final arguments for 16.10.2017, 15.11.2017, 25.11.2017, 18.12.2017, 07.03.2018, the judgment and decree was passed.

20. Plea taken by the applicant/defendant in his application is that next date of hearing i.e. 30.05.2017 was not posted in the diary of the counsel for defendant. Perusal of the vakalatnama filed on behalf of defendant would indicate the name of M.V.Kini and Co. was shown in which the name of four advocates were mentioned and it is not specified as to how a single date i.e. purported to be missed on 28.04.2017 would create a situation that for a period of more than 1.5 years it would neither come into the knowledge of applicant/defendant nor to his counsel that judgment and decree was already pronounced on 07.03.2018. Not a single document has been placed on record to show that there is a due diligence on the part of defendant to inquire about the fate of his case which is at the stage of Defendant evidence since 13.01.2017. In the present case, it is not only the question of default of one or two dates of hearing as perusal of proceedings would indicate that as many as 7 dates within a span of more than one year has passed but no steps were taken by either counsel for defendant or defendant. There is a total lack of due diligence on the part of defendant and counsel for defendant.

21. It is also relevant to note that even if some date is missed to be noted down in diary by making a wrong entry ultimately, the said file/brief is kept at some place and some denotion is mentioned with

regard to the next date of hearing but in the present case simply filing a photocopy of a diary after a period of more than 19 months when the case was last attended on behalf of defendant does not appears to be probable or justified.

22. The explanation for not attending the date on 30.05.2017 and absence on number of dates (about 7 in number) by defendant does not provide any justification to set aside the ex parte judgment and decree dated 07.03.2018."

4. The learned counsel for the petitioner submits that in the order dated 09.08.2017 passed in the Suit, it was recorded that the Court notice issued to the petitioner for default of its appearance had been received back unserved. The petitioner submits that the petitioner was served at the same address in the Execution Petition filed by the respondent and therefore, an inquiry should have been held as to how the Court notice issued during the pendency of the Suit had come back unserved.

5. The learned counsel for the petitioner further submits that even otherwise, on merits, grave injustice would be caused to the petitioner incase the petitioner is not allowed to defend the Suit and the *ex parte* decree is not set aside.

6. I am not convinced with the arguments made by the learned counsel for the petitioner. As recorded in the impugned order, on 13.01.2017, the respondent's evidence was closed and the case was fixed for petitioner's evidence on 08.03.2017. Thereafter it was listed

on 28.04.2017. On 30.05.2017, final opportunity was granted to the petitioner to lead evidence and Court Notice was issued for 09.08.2017. As recorded in the order dated 09.08.2017, the Court notice was returned unserved. Thereafter also the case was listed for final arguments on 16.10.2017, 15.11.2017, 25.11.2017, 18.12.2017 and 07.03.2018. It is only thereafter that an *ex parte* judgment and decree was passed by the learned Trial Court on 07.03.2018. Thereafter also, no endeavour was made by the petitioner to find out the status of the Suit. It is only on 12.12.2018, after the petitioner had been served with the notice of the Execution Petition that the petitioner finally woke up and filed the application.

7. While the petitioner claims that the date of 30.05.2017 had been wrongly written by the counsel representing the petitioner before the learned Trial Court, there is no explanation for not following up on the case thereafter for a period of almost one year and even thereafter till notice on Execution Petition filed by the respondent was received.

8. The learned counsel for the petitioner submits that this was because the petitioner was situated at Mumbai. However, the same cannot be a valid justification for the non appearance of the petitioner. It is not only for the lawyers to keep a track on the case but also for the litigant to be vigilant. By putting the blame on the lawyer, the litigant cannot wash away its own negligence. The Court cannot certainly come to the aid of such a litigant.

9. As far as the submissions of the learned counsel for the petitioner on the merit of the decree are concerned, the same cannot be

gone into in the present proceedings. This is not an appeal filed against the decree.

10. Accordingly the present petition is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

JANUARY 25, 2021/rv

