

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

INTERIM APPLICATION NO.198 OF 2020
WITH
INTERIM APPLICATION NO.199 OF 2020
WITH
INTERIM APPLICATION NO.200 OF 2020
IN
ADMIRALTY SUIT NO.13 OF 2011

Cethar Limited

...Applicant/
Plaintiff

vs.

MV. Le Tong and Others

...Defendants

Mr R. Subramanian, for the Applicant/Plaintiff

Mr. Abhimanyu Singh i/b. Mr. V. Subramanian, for Defendant No. 1.

Ms. Priyanka Patel, for Defendant No. 3.

CORAM : N. J. JAMADAR, J.

DATE : DECEMBER 01, 2022

P.C.:

1. The applicant/plaintiff has taken out the Interim Applications No. 198 and 199 of 2020 for condonation of delay of 177 days in filing the application to set aside the order dated 14th June, 2019 whereby the suit came to be dismissed for want of prosecution and to set aside the said order and restore the suit to file.

2. In the applications, it is averred that on account of the confusion which arose over the alleged non-acceptance of Vakalatnama, the then advocate for the plaintiff could not appear before the Court when the suit was listed before the Court and

consequently it came to be dismissed for want of prosecution.

3. An affidavit in reply is filed on behalf of the defendant No. 1 contesting the averments in the applications. It is alleged that the applicant is guilty of *Suggestio Falsi*.

4. Heard Mr R. Subramanian, the learned counsel for the Applicant/Plaintiff and Mr. Abhimanyu Singh, learned counsel for for defendant No. 1.

5. The learned counsel for defendant No. 1 submitted that the suit was initially dismissed by an order dated 13th December, 2017 for want of prosecution. Thereafter, pursuant to the order passed by the Division Bench in Appeal No. 59 of 2018 dated 13th December, 2018, the suit stood restored subject to payment of costs of Rs. 25,000/- by the plaintiff to defendant. Again the plaintiff committed default in entering appearance and, resultantly, the suit came to be dismissed by an order dated 14th June, 2019. The conduct of the plaintiff does not warrant exercise of discretion in favour of the plaintiff.

6. In contrast to this, the learned counsel for the plaintiff

submitted that the plaintiff who has equities in its favour should not be made to suffer on account of the inadvertence on the part of the advocate who happened to represent the plaintiff at that time.

7. Without delving deep into the reasons ascribed in the application and counter thereto, it would be suffice to note that the prime reason for non-appearance of the plaintiff when the suit was listed before the Court, on the day on which it came to be dismissed, appears to be the alleged confusion on account of non-acceptance of the Vakalatnama of the concerned advocate. It is trite that a party ought not to suffer the consequences of lack of diligence on the part of the advocate who represents it. It is also well recognized that the Court ought to lean in favour of deciding a matter on merits so as to advance the cause of substantive justice.

8. For the foregoing reasons, I am impelled to allow the applications, condone the delay in taking out the application for setting aside the said order dated 14th September, 2019 and also set aside the order and restore the suit to file subject to payment of costs of Rs. 1,00,000/- (One Lakh) by the plaintiff/applicant to defendant No. 1, within a period of three weeks.

9. The payment of costs shall be a condition precedent for the restoration of the suit.

10. In the event of default, this order would stand vacated without further reference to the Court.

11. Applications disposed.

12. In the event the suit is restored, post payment of costs by the plaintiff/applicant to defendant No. 1, it be listed for directions on 12th January, 2023.

(N. J. JAMADAR, J.)