



A.No.4495 of 2022
in
C.S.No.222 of 2019
(Comm Suits)

M.SUNDAR, J

Read this in conjunction with and in continuation of separate proceedings made in A.No.4494 of 2022, which reads as follows:

' This order will now dispose of the captioned application.

2. In these proceedings, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3. Captioned main suit was decreed *ex parte* on 22.08.2019. Thereafter, Execution Petition being E.P.No.14 of 2022 on the file of an Execution Court in the State of Rajasthan was launched, on receipt of notice from the Execution Court, defendant came before this Court and filed captioned application albeit with a delay of 18 days, which was condoned vide an order dated 29.09.2022 made by this Commercial Division in A.No.3891 of 2022, which reads as follows:

'In this order, the parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2. Mr.T.M.Ramalingam of M/s.Om Sai Ram Law Firm LLP for the sole plaintiff and Mr.Rahul K.Jain, learned counsel for the sole defendant are before this Commercial Division.

3. Captioned application has been filed by defendant with a prayer for 'Condonation of Delay' ['COD']. COD is qua delay in filing set aside application i.e., application to set aside ex-parte decree dated 22.08.2019.

4. Learned counsel for defendant, adverting to the support affidavit in the captioned application, more particularly paragraph 4 thereat submits that the address of the defendant has not been given correctly and therefore, suit summons has not been served.



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5. A careful perusal of the suit file brings to light that suit summons remain 'unserved'. Adverting to the paragraph 6 of the supporting affidavit, learned counsel for the defendant submits that the defendant came to know about the ex-parte decree only on 08.07.2022 when notice was received in Execution Petition being E.P.No.14 of 2022 on the file of an Execution Court in Rajasthan. The set aside application ought to have been filed on or before 07.08.2022 but it was ultimately filed on 24.08.2022. Therefore, if computed the delay from the date of knowledge delay is only 18 days is learned counsel's say. It has become necessary to capture this as the prayer talks about delay of 1098 days.

6. Learned counsel for plaintiff very fairly submits that he is not opposing the COD prayer but requests for putting defendant on terms.

7. In the light of the fair stand taken by learned counsel for plaintiff, it may not be necessary to dilate any further on facts or discussion.

8. In the light of the narrative thus far, this Court is of the view that this is not a fit case to put defendant on terms and therefore, captioned application is ordered as prayed for. There shall be no order as to costs.

List the captioned main suit on 27.10.2022.'

4. The above order acceding to the 'Condonation of Delay' ['COD'] prayer captures essential facts. To be noted, COD application and captioned application are supported by a common affidavit.



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5. Today, Mr.Rahul K Jain, learned counsel for sole defendant who has taken out the captioned application and Mr.J.Kirthick Rishi of M/s.Om Sai Ram Law Firm LLP, learned counsel representing the counsel on record for plaintiff is before this Commercial Division. Adverting to earlier order in COD application dated 28.09.2022, learned counsel for plaintiff very fairly submits that captioned application is also not opposed. Therefore, it is not necessary to dilate into the reasons and in any event, the reasons have been captured in paragraphs 4 and 5 of the earlier order.

In the light of the narrative thus far, captioned application is ordered as prayed for. *Ex parte* decree dated 22.08.2019 made in C.S.No.222 of 2019 is set aside. There shall be no order as to costs.'

2. The above order is telltale. Therefore, captioned application is disposed of as closed. It is open to the defendant to produce a copy of the aforementioned order as also this order (web copy or digital copy) before the Executing Court.

Captioned application closed with the above observation. There shall be no order as to costs.

27.10.2022

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