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

Reserved on: April 25, 2022
Decided on: July 04, 2022

+ RFA (OS) 8/2019 & CM No. 3306/2019

THE KOLKATA MUNICIPAL CORPORATION & ANR
..... Appellants

Through: Mr. Ashim Kumar Banerjee, Senior Advocate with Mr.Sujoy & Ms. Anisha Upadhyay, Advocates.

Vs.

M/S RANA CHARIS & ORS ..... Respondents

Through: Mr. Dharmendra Sharma, Advocate for R-1.

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CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

SUDHIR KUMAR JAIN, J

CM No. 3306/2019 in RFA No. 8 /2019 (For condonation of delay)

1. The appellants have filed the present appeal challenging the judgment and decree dated 17.09.2015 passed by the learned Single Judge of this court in Civil Suit No. 1090/2013 titled as **M/s Rana Chairs V Director General (Town Planning), Kolkata Municipal Corporation & others** after delay of 1150 days.

2. The appellants filed the present application under Section 5 of Limitation Act, 1963 for condonation of delay of 1150 days in filing present appeal. The appellants pleaded that appellant no. 1 did not participate in the proceedings pertaining to suit no. 1090/2013 under genuine belief that the case would be transferred to the High Court of Calcutta due to lack of territorial jurisdiction in court at Delhi. The appellants came to know about passing of the judgment and decree dated 17.05.2015 on 08.03.2017 in execution petition no 5 of 2017 which was preferred by the respondent no. 1 before High Court of Calcutta when the appellants received notice of said execution proceedings. The appellants filed an application bearing IA No. 4956/2016 under Order IX Rule 13 CPC for setting aside the *ex-parte* judgment and decree dated 17.09.2015 which was dismissed by the learned Single Judge vide judgment dated 05.10.2018. The appellants also decided to prefer the Regular First Appeal (RFA) which was accordingly prepared by the counsel for the appellants and draft of RFA was sent to the concerned department for vetting and signing of the affidavits in the month of November, 2018. The appeal was filed in December, 2018. The delay on part of the appellants in filing present appeal was owing to genuine and *bona fide* belief that the suit would be transferred to the High Court of Calcutta due to lack of territorial jurisdiction in court at Delhi. The delay of 1150 days was neither intentional nor deliberate. It was prayed that delay of 1150 days in filing present appeal be condoned.

3. The respondent no. 1 submitted that the appellants did not show sufficient cause for condonation of delay of 1150 days in filing present

appeal but took flimsy ground of wrong legal advice for condonation of delay which is lacking material particulars. The application for condonation of delay is without any merit and be dismissed. The respondent no. 1 relied on **Popat Bahiri Govardhane & Others V Special Land Acquisition Officer & Another,** 2013 (10) SCC 765**; Office of the Chief Post Master General & Others V Living Media Ltd & Another,** AIR 2012 SC 1506 and **The State of Madhya Pradesh & Others V Bherulal,** 2020 (10) SCC 654.

4. The Law of limitation is based on equitable principle that a litigant should be prompt in claiming the relief in legal proceedings and is required to bury acts of the past which become stale due to lapse of time and have not been agitated within time. Section 3 of the Act, provides that every suit, appeal and application if filed or instituted after the prescribed period is liable to be dismissed although limitation has not been set up as a defence. Section 5 of the Act deals with the extension of prescribed period of limitation. The Court with discretionary jurisdiction can condone the delay and proceed with the case if concerned party furnishes sufficient cause for delay in institution of appeal and application. Section 5 of the Limitation Act reads as under:-

> **5. Extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.**

Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

5. The term "sufficient cause" as appearing in Section 5 of the Act is not defined and is required to be interpreted to advance cause of justice. The Supreme Court in **Ramlal, Motilal and Chhotelal V Rewa Coalfields Ltd,** 1962 SCR (3) 762 connected Section 5 of the Act with doctrine of substantial justice and observed as under:-

In construing S.5, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

6. The Supreme Court in **Collector Land Acquisition V Mst. Katiji & others,** 1987 SCR (2) 387 observed that the legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the Courts to apply the law in a

meaningful manner which sub-serves the ends of justice which is being the life-purpose for the existence of the institution of Courts. The Supreme Court laid down certain principles which need to be followed while employing doctrine of condonation of delay which are as under:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

7. It must be noted that no party can claim condonation of delay even if sufficient cause has been made out in the facts of a given case. It was held in **Ramlal, Motilal and Chhotelal V Rewa Coalfields Ltd.** as under:-

It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by S. 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it.

8. The Supreme Court in **Ramlal, Motilal and Chhotelal V Rewa Coalfields Ltd.** also considered condonation in relation to delay caused in filing an appeal by the State and observed as under:-

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos,

delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause".

9. The Supreme Court after relying on **Postmaster General V Living Media India Ltd.,** (2012) 3 SCC 563 in **Government of Maharashtra (Water Resources Department) V M/S Borse Brothers Engineers & Contractors Pvt. Ltd.,** 2021 SCC OnLine SC 233 held that merely because the government is involved, a different yardstick for condonation of delay cannot be laid down. Similar view was again expressed in **State of M.P. V Chaitram Maywade,** (2020) 10 SCC 667.

10. The appellants have filed the present appeal after delay of 1150 days. The sufficient cause pleaded by the appellants for condonation of delay is that the appellants due to ill legal advice were under genuine belief of transfer of the case to the High Court of Calcutta due to lack of territorial jurisdiction in court at Delhi. The said plea of the appellants is without any basis and the appellant being a statutory body was required to obtain appropriate legal advice from its Law Department or panel advocates regarding legal aspects. The plea of ill legal advice is based on conjectures and surmises and is raised without disclosing material particulars. The appellant was required to be vigilant in obtaining proper legal advice in relation to present suit. The appellant should or ought to have taken possible defence in its favour

before the learned Single Judge by participating in the trial of Suit bearing No. 1090/2013. This court in **Riasat Ali V Smt. Sayeeda Begum and another,** 2001 IIAD Delhi 501 relied upon by the respondent no. 1, regarding plea of illegal advice for condonation of delay observed as under:-

> **There is no doubt that Courts have given relief and succour to litigants who have apparently suffered because of wrong legal advice given to them. There is, however, such an explosion and proliferation in resting cases of delay on this excuse, as to require a rethinking on the subject. The interests of the adversary in the litigation, which has been given statutory recognition in the Limitation Act, has been completely obliterated. I am unable to close my eyes to the plight of one set of litigants by giving untrammelled and unrestricted relief to the other. In my opinion, it is essential for the party claiming relief from limitation because of it following wrong legal advice, unless such a case has been made out beyond all doubt.**

11. The plea of the appellants that they came to know about passing of the judgment and decree dated 17.05.2015 after receipt of notice on 08.03.2017 in execution petition no. 5 of 2017 filed by the respondent no. 1 before High Court of Calcutta is contrary to plea taken by the appellants in application bearing IA no. 4956 of 2016 filed under Order IX Rule 13 CPC wherein the appellants stated that summons were served on defendants on 11.12.2013. Even it is presumed that the appellants came to know about pendency of suit on 08.03.2017 even

then the appeal was preferred in December, 2018. The plea of the appellants that the appellants decided to prefer the present Regular

First Appeal (RFA) which was accordingly prepared and draft was sent to the concerned department for vetting and signing of the affidavits in the month of November, 2018 again reflects negligence, ignorance, inaction and slackness on the part of the appellants in filing present appeal. The delay on part of the appellants in filing present appeal was not genuine, *bona fide* and beyond control of the appellants.

12. After considering all facts, we are of opinion that the appellants have failed to disclose sufficient cause for condonation of delay of 1150 days in filing the present appeal. Hence, application is dismissed.

RFA (OS) 8/2019

1. The appellants filed the present appeal under Section 96 read with Order 41 of the Code of Civil Procedure, 1908 (hereinafter referred to as **"CPC"**) against the judgment and decree 17.09.2015 passed by the learned Single Judge in Civil Suit No. 1090/2013 and prayed as under:-

> **I. Call for the records of Civil Suit No. 1090/2013 and allow the appeal by setting aside the judgment and decree dated 17.09.2015 passed by the Ld. Single Judge in the High Court of Delhi at New Delhi,**
> **II. May pass such other and further order(s) which this Hon'ble Court may deem fit and proper.**

2. The factual background, stated in Civil Suit bearing No. 1090/2013 titled as **M/s Rana Chairs V Director General (Town Planning) & others** filed by the respondent no. 1/plaintiff (hereinafter referred to as **"the respondent no. 1"**) against the respondent no.

2/defendant no. 1/Director General (Town Planning)/, the defendant no. 2/N. B. Basu, the defendant no. 3/P.K.Dass and the defendant no. 4/Sankar Gosh who were stated to be officers of the appellant no. 1, is that the respondent no 1, a proprietorship firm and conducting business of supplying high quality cinema-auditorium chairs throughout India under name & style of M/s Rana Chairs, in pursuance of advertisement **Mark A** issued on behalf of the appellant no. 1 regarding supply of 750 chairs to be fitted and fixed at Sarat Sadan Hall at Behela i.e. designated site, being lowest bidder was invited vide letter dated 05.12.2009 **Ex. PW1/B** to execute agreements for issuance of work order. Accordingly, two agreements dated 10.02.2010 **Mark C & D** were entered into and Work Orders dated 10th February, 2010 bearing no. CMA & TP/22/09-10 for 231 chairs @ 4401/chair amounting to Rs.10,16,631/- **Mark E** and bearing no. CMA & TP/23/09-10 for 519 chairs @ 4401/chair amounting to Rs.22,84,119/- **Mark F** (total amounting to Rs.33,00,750/-) were issued in favor of the proprietor of the respondent no. 1. The respondent no. 1 in pursuance of Way Bill Form-50 bearing no. 8096658 and Way Bill Form-50 bearing no. 8096657 both dated 16.04.2010 received on behalf of the appellant no. 1 sent two Performa Invoices **Mark G1 and G2.** Accordingly first consignment of 519 chairs vide Invoice No. 56 dated 22.02.2010 for Rs. 22,84,119/- **Mark K** and second consignment of 231 chair vide Invoice no. 55 dated 22.02.2010 for Rs.10,16,631/- **Mark J** were delivered to the respondent no. 2 at designated site vide delivery receipts **Ex. PW1/H and Ex. PW1/I**. The respondent no. 1 after

delivery contacted the concerned officers of the appellant no. 1 for fitting and fixing the chairs but the designated site was not available. The respondent no. 1 vide letters dated 16.06.2010 **Mark M** and 27.10.2010 **Mark N** asked concerned officers of the appellant no. 1 for release of payment but no officer of the appellant no. 1 responded to these letters. The respondent no. 1 met Chief Municipal Engineer (P&D) who asked the respondent no. 1 to install 750 chairs to another site i.e. Uttam Manch, which was stated to be busy till the end of November, 2011 and the respondent no. 1 also received a letter bearing no. A&D/L/2444/10-11 dated 23.02.2011 **Mark O** to the said effect. The respondent no. 1 sent another letter dated 25.07.2011 **Ex. PW1/P** to the officers of the appellant no. 1. The respondent no. 1 came to know about fire incident occurred at the designated site in the month of October, 2011. The respondent no. 1 sent letter dated 14.11.2011 Ex. PW1/Q1 to the concerned officers of the appellant no. 1 for release of payment but did not receive any response. The appellant no. 1 sent a letter dated 22.11.2011 **Ex.PW1/R** for joint inspection to assess the loss caused by fire which was conducted on 29.11.2011 and joint inspection evaluation of damages report dated 05.12.2011 **Ex. PW1/S** was prepared and delivered to officers of the appellant no. 1. The respondent no. 1 received a letter bearing no. P&D/L/266/11-12 dated 14.12.2011 **Ex.PW1/T** from officers of the appellant no. 1 whereby the respondent no. 1 was asked to submit 'received copy' regarding delivery of 750 chairs and accordingly 'received copy' signed and stamped by Dipankar Sinha, Director General, Town Planning was submitted by the respondent no. 1 along

with reply dated 07.01.2012 **Ex. PW1/U**. However, the appellant no. 1 vide letter dated 24.01.2012 **Ex.PW1/V** informed that documents submitted by the respondent no. 1 along with reply dated 07.01.2012 **Ex. PW1/U** did not relate to supply of 750 chairs. The respondent no. 1 sent a legal notice dated 05.09.2012 **Ex. PW1/W** (along with postal receipts) to the officers of the appellant no. 1 but these officers neither replied legal notice dated 05.09.2012 nor made payment of Rs.33,00,750/- along with interest @ 18% per annum. The respondent no. 1 also sent another letter dated 17.04,2013 **Ex. PW1/X** subsequently. The respondent no. 1 being aggrieved filed a suit for recovery of Rs.50,83,155/- which included principle amount of Rs.33,00,750/- and interest @ 18% since 26.05.2010 till filing of present suit along with *pendent lite* and future interest @ 18% per annum. The respondent no. 1 made following prayers:-

> **In view, of the submissions made above and in the light of facts and circumstances of the case, it is most respectfully and humbly prayed that in interest of justice this Hon'ble Court may be pleased to:**
> **(a) Pass a decree of Rs 50,83,155/- (Fifty lakhs, Eighty –three thousands, one hundred fifty five only) along with *pendente-lite* and future interest @18% p.a. in favour of the Plaintiff and against the Defendants.**
> **(b) Costs of the suit may be awarded to the Plaintiff.**
> **Any other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case may also be passed.**
> **It is prayed accordingly.**

3. The respondent no. 1 vide statement dated 28.04.2014 made before the Joint Registrar preferred to delete the defendants no. 3 and 4 from array of the parties. The defendants no. 1 & 2 were ordered to

be proceeded *ex-parte* vide order dated 27.05.2014. The respondent no. 1 led *ex-parte* evidence and examined its proprietor Anil Kumar Sachdeva as PW1 who tendered affidavit Ex. PW1/1 in evidence wherein deposed in consonance with averments made in the plaint and placed reliance on documents as mentioned hereinabove. The suit titled as **M/S Rana Chairs V Director General (Town Planning) Kolkatta Municipal Corporation & others** bearing no. CS (OS) 1090/2013 was decreed vide judgment and decree dated 17.09.2015 passed by learned Single Judge and held as under:-

> **This Court is of the view that there is nothing on record which could suggest that the prayers sought in the plaint could not be granted. The acknowledgement of the chairs by the defendants is not rebutted; their request for installation of the chairs at Sarat Sadan, Behata, is acknowledgement of the acceptable and good quality of the chairs. The letter of 17.04.20I3 is evidently an afterthought and an endeavour, by the defendants to escape the acknowledged liability to pay the monies payable to the plaintiffs as a consequence of the Supply of the chairs as per the bills raised. Accordingly, the suit is decreed in terms of prayers (a) and (b) of the plaint. A cost of Rs. 1.00 lac also is imposed upon the defendants towards this litigation. Decree sheet be drawn up accordingly.**

4. The respondent no. 1 filed a contempt petition bearing CC 54 of 2017 in the High Court of Calcutta. The perusal of said petition reflects that decree passed in pursuance of judgment dated 17.09.2015 was transferred to High Court of Calcutta for execution. The respondent no. 1 filed an execution petition EC no 5 of 2017 with EC no 55 of 2017 titled as **M/s Rana Chairs V Director General (Town Planning), KMC & another** before the High Court of Calcutta. The High Court of Calcutta vide order dated 11.04.2017 directed the

appellant no. 1 to deposit entire amount in terms of decree dated 17.09.2015 with the Registrar, High Court, Original Side within three weeks who was further directed to invest said amount in a suitable fixed deposit to be renewed till further orders. The appellant no. 1 did not comply with order dated 11.04.2017 and due to this contempt petition bearing CC 54 of 2017 was filed in the High Court of Calcutta. The learned Single Judge of the High Court of Calcutta vide order dated 28.11. 2018 directed to attach bank account of the Kolkata Municipal Corporation for a sum of Rs. 52 lakhs.

5. An application bearing IA no. 4956 of 2016 under Order IX Rule 13 CPC was filed on behalf of the appellant no. 1 to set aside *ex-parte* judgment and decree 17.09.2015 on grounds that summons were served on defendants on 11.12.2013 and thereafter the defendant no. 1 contacted concerned department including Law Department; Kolkata Municipal Corporation had no branch in Delhi; the local advocate misguided the appellant no. 1 by giving assurance about dismissal of suit due to lack of territorial jurisdiction in Court at Delhi and defaults on part of the respondent no. 1 in terms of agreement besides other grounds. The application was contested by the respondent no. 1.

6. The learned Single Judge vide judgment dated 05.10.2018 had dismissed application bearing IA no. 4956/2016 filed on behalf of the appellant no. 1 to set aside decree 17.09.2015 under Order IX Rule 13 CPC and held as under:-

9. Keeping in view the above, this Court is of the view that the applicants/defendants have failed to show 'sufficient cause' in the present case to set aside the ex-parte decree dated 17th September, 2015. The explanation offered in the present application by the applicants/defendants is meritless. In the opinion of this Court, the applicants/defendants in the present case have been negligent and they could not have presumed that the plaintiff's suit would be dismissed by this Court on account of lack of territorial jurisdiction. In the opinion of this Court, if the excuse of the applicants/defendants for restoration is accepted, then no party will ever appear in the Court after receipt of summons.
10. Consequently, the present applications are dismissed on the ground of limitation as well as being without any merit.

The appellant no. 1 preferred a First Appeal registered as FAO (OS) bearing no. 185/2018 dated 01.11.2018 which is stated to be pending for adjudication.

7. The appellants filed an appeal bearing RFA(OS) 8/2019 titled as **The Kolkata Municipal Corporation & another V M/s Rana Chairs & others** to impugn judgment and decree dated 17.09.2015 which was disposed of vide judgment dated 14.03.2019 passed by the Division Bench of this Court with consent of the parties by directing as under:-

The parties have agreed as under:

(i) The impugned order dated 17.09.2015 is set aside.
(ii) The plaint shall be returned to enable the respondent/plaintiff to file the same in the appropriate court of jurisdiction.
(iii) The Bank account which has been attached in the sum of Rs.52,15,317/- will be converted into a Fixed Deposit Receipt(FDR) in the name of the respondent No. 1 and

deposited with the Registrar General of the Calcutta High Court. The FDR will be made within four weeks.
(iv) In case the plaintiff/respondent No. 1 succeeds, the amount accrued together with interest shall be released in favour of the respondent No. 1 together with whatever claim he may have further as per the decree, if so passed.

8. The appellant no. 1 filed an application GA No. 1073 of 2019 before High Court at Calcutta for modification of order passed by the Division Bench of this court in RFA (OS) 8/2019 which was dismissed vide order dated 11.06.2019 by observing that High Court at Calcutta does not have the jurisdiction to modify the order passed by the Delhi High Court.

9. The respondent no. 1 filed an application CM APPL. 32151/2019 under section 151 CPC for recalling of the order dated 14.03.2019 on the ground that the appellant no.1 was granted a period of four weeks reckoned from 14.03.2019 for preparing FDR of Rs.52,15,317/- from its attached bank account and was required to deposit with the Registrar General of the High Court of Calcutta but the appellant no. 1 has failed to comply these directions till date. The Division Bench of this court vide order dated 22.08.2019 in view of the facts and circumstances and the lackadaisical conduct of the appellant no. 1 and also failure to abide by the terms and conditions of the settlement recorded in the order dated 14.03.2019 recalled the consent order dated 14.03.2019.

10. The appellants challenged *ex-parte* judgment and decree dated 17.09.2015 by filing present appeal on the grounds that the non-

appearance of the appellant no. 1 was neither deliberate nor willful. The appellant no.1 did not have any office in Delhi. The judgment and decree dated 17.09.2015 is a nullity in law and cannot be cured by consent or waiver by the party. The appellant no. 1 has case on merit and on facts with likelihood of succeeding in the case. The law laid down by the Supreme Court in the **Harshad Chiman Lai Modi V DLF Universal Ltd. & another,** 2005 (7) SCC 791 was not properly appreciated. The negligence on the part of the appellant was *bona fide*. The relationship between the appellant no. 1 and the respondent no. 1 was governed by legal and valid agreements which were signed and entered at Kolkata. The appellant no. 1 was misguided by legal advice with assurance that the suit would not be proceeded in Court at Delhi due to lack of territorial jurisdiction. The respondent no. 1 with an ulterior view deliberately preferred the suit before Court at Delhi and was aware that the subject matter of the dispute was within the territorial jurisdiction of Courts in Kolkata. To burden the appellant no. 1 with such a huge liability would be an additional burden on the public exchequer. The appellant no. 1 was under genuine belief that the suit would be transferred to the courts in Kolkata. The judgment and decree dated 17.09.2015 is perverse and suffers from patent illegality thus liable to be set aside being contrary to law. The suit was suffering from patent illegality like non-joinder of necessary party i.e. Kolkata Municipal Corporation and its Chief Executive i.e. Municipal Commissioner/ the appellant no. 2; notice under section 586 of Kolkata Municipal Corporation Act, 1980 was not served before

institution of suit and was barred by limitation. It was prayed that judgment and decree dated 17.09.2015 be set aside.

11. The learned Senior Counsel appearing on behalf of the appellants in oral arguments and in written submissions, besides mentioning factual background submitted that the appellant no. 1 was not a party to the suit and notice under Section 586 of the Kolkata Municipal Corporation Act, 1980 was not served on the appellant no. 1 before institution of the suit which is a mandatory requirement. The appellant no. 1 could not complete process of making of FDR in terms of judgment dated 14.05.2019 passed by the Division Bench of this court due to non-cooperation of the respondent no. 1. The suit is not maintainable as Court at Delhi did not have territorial jurisdiction to entertain the present suit and entire cause of action has been accrued at Kolkata as the tender was floated by the appellant no. 1 at Kolkata and work orders were issued at Kolkata; the respondent no. 1 allegedly supplied the chairs at Kolkata and no part of cause of action has ever been arisen in Delhi. The learned Senior Counsel during arguments referred **Harshad Chiman Lai Modi V DLF Universal Ltd. & another,** 2005 (7) SCC 791 and particularly relied on para no. 13 of said judgment which is reproduced as under:-

> **Mr. Rohatgi, Senior Advocate appearing for the respondents, on the other hand, supported the order passed by the trial court and confirmed by the High Court. He submitted that the suit relates to specific performance of agreement relating to immovable property. In accordance with the provisions of Section 16 of the Code, such suit can be instituted where the immovable property is situate. Admittedly the property is**

situate in Gurgaon (Haryana). Delhi Court, therefore, has no jurisdiction to entertain the suit which is for specific performance of agreement of purchase of a plot - immovable property - situate outside Delhi. According to the counsel, even if it was not contended by the defendants that Delhi Court had no jurisdiction or there was an admission that Delhi Court had jurisdiction, it was totally irrelevant and immaterial. If the court had no jurisdiction, parties by consent cannot confer jurisdiction on it. The counsel also submitted that this is not a case in which two or more courts have jurisdiction and parties have agreed to jurisdiction of one court. According to Mr. Rohatgi, Section 20 of the Code would apply where two courts have jurisdiction and the parties agree as to jurisdiction of one such courts by restricting their right to that forum instead of the other. When Delhi Court had no jurisdiction whatsoever, no reliance could be placed either on Section 20 of the Code or on Clause 28 of the agreement. The order passed by the trial court and confirmed by the High Court is, therefore, legal and lawful and the appeal deserves to be dismissed, submitted the counsel.

12. The counsel for the respondent in oral arguments and in written submissions besides factual background submitted that the appeal is time barred and court at Delhi is having territorial jurisdiction to entertain and try present suit as the respondent no. 1 manufactured 750 chairs on specific demands of the appellant no. 1 after procuring raw material at Delhi; the respondent no. 1 dispatched chairs from Delhi and the respondent no. 1 is running its business in Delhi. The appeal is liable to be dismissed being meritless.

13. Section 15 CPC deals with place of suing. It provides that every suit shall be instituted in the Court of the lowest grade competent to try it. Sections 16 to 20 CPC deals with territorial jurisdiction of civil

courts. Section 20 being a residuary provision, covers all cases not falling under Sections 16 to 19. Section 20 CPC provides that suits to be instituted where defendants reside or cause of action arises. It reads as under:-

> **20. Other suits to be instituted where defendants reside or cause of action arises.—**
>
> **Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—**
>
> **(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or**
> **(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or**
> **(c) The cause of action, wholly or in part, arises.**

14. Jurisdiction is an important factor to determine power of the court to adjudicate the case. No court can proceed with the suit unless and until court is having jurisdiction to entertain and try the suit. Jurisdiction confers the power or authority upon the court to adjudicate any dispute between the concerned parties and to pass judgment or order. Jurisdiction is not defined in CPC but reflects competency of the court to try the suit. Jurisdiction is boundary of

civil court in exercise its judicial authority. Jurisdiction of civil courts can be categorised on the basis of pecuniary, territorial and subject matter. In Territorial Jurisdiction, geographical boundaries and limits determine the jurisdiction of civil courts. In **Hriday Nath Roy V Ram Chandra,** AIR 1921 Cal 34 High Court of Calcutta explained Jurisdiction and observed as under:-

> **An examination of the cases in the books discloses numerous attempts to define the term 'jurisdiction', which has been stated to be 'the power to hear and determine issues of law and fact;' 'the authority by which judicial officers take cognizance of and decide cause;' 'the authority to hear and decide a legal controversy;' 'the power to hear and determine the subject-matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them;' 'the power to hear, determine and pronounce judgment on the issues before the Court;' 'the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments into effect;' 'the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution.**

15. The question of what is jurisdiction fell for consideration before the Supreme Court in **Official Trustees West Bengal V Sachindra Nath Chatterjee**, AIR 1969 SC 823. The Supreme Court after relying on the Full Bench judgement in **Hriday Nath Roy V Ramchandra** held as under:

> **13. What is meant by jurisdiction? This question is answered by Mukherjee Acting C.J., speaking for the full bench of the Calcutta High Court in Hirday Nath Roy v. Ramchandra Barna Sarma, ... explained what exactly is meant by jurisdiction. We cannot do better than to quote his words:**

In the order of Reference to a Full Bench in the case of Sukhlal v. Tara Chand, (1905) ILR 33 Cal 68 (FB), it was stated that jurisdiction may be defined to be the power of a Court to 'hear and determine a cause, to adjudicate and exercise any judicial power in relation to it:' in other words, by jurisdiction is meant 'the authority which a "Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.' An examination of the cases in the books discloses numerous attempts to define the term 'jurisdiction', which has been stated to be 'the power to hear and determine issues of law and fact' "the authority by which the judicial officers take cognizance of and decide causes"; 'the authority to hear and decide a legal controversy' "the power to hear and determine the subject matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them"; "the power to hear, determine and pronounce judgment on the issues before the Court"; "the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgements into effect"; "the power to enquire into the facts, to apply the law, to pronounce the judgement and to carry it into execution".

Proceeding further the learned Judge observed: "This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary or matrimonial causes, acquisition of lands for public purposes, record of rights as between landlords and tenants. This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject matter is obviously of a fundamental character.

16. As per Section 20 (c) a civil suit can be instituted at a place where the cause of action, wholly or in part, arises. The phrase "cause of action" is not defined in CPC. The cause of the action can be stated to be a bundle of facts which allow a person to establish his or her legal rights against another person with a right to take legal action against another person on the basis of these facts. Cause of action is an integral part and foundation of the plaint and if there is no cause of action then the plaint has to be rejected. The cause of action must have occurred before institution of plaint. The Supreme Court in **Om Prakash Srivastava V Union of India and another** (2006) 6 SCC 207) clarified expression "cause of action" as under:-

> **"Cause of action" means, in the restricted sense, the circumstances which constitute a infringement of the right or the immediate cause for the reaction. In the wider sense it implies the conditions required for the enforcement of the action, including the violation of the right and the violation combined with the power itself. Compendiously, as noted above, the expression means any fact that the plaintiff would need to assert, if violated, to maintain his right to the Court's judgment. Every circumstance that is required to be established, as distinguished from every piece of evidence that is necessary, to prove that every fact is part of "cause of action.**

17. The respondent no. 1 in plaint regarding accrual of cause of action in its favor and territorial jurisdiction of this court averred facts which are reproduced as under:-

> **25. The cause of action for filing the present suit has arisen in favor of Plaintiff and against the Defendants on 10.02.2010 'when agreement was executed between the parties for supply,**

fitting & fixing of chairs , cause of action further arose when defendants issued two work orders dated 10.02.2010 in favour of plaintiff in Delhi, cause of action further arose when the plaintiff purchased the raw materials in Delhi to fulfill the work order requirements, cause of action further arose when chairs were made in Delhi at the business premises of the plaintiff, cause of action further arose when Performa Invoice No.55 and 56 dated 22.02.2010 were raised for purpose of issue of Way Bill Form 50, and Invoice Bills No. 55 &56 were raised in Delhi on 22.02.2010 , cause, of action further arose when the two Way Bill dated 16.04.2010 were sent by defendants to the plaintiff in Delhi, cause, of action further arose when first consignments of 519 chairs was sent by the plaintiff to the defendants from Delhi to Kolkata on 9.05.2010 through TCI freight in Delhi, cause of action further arose in favor of plaintiff and against the defendants when second consignment of 231 chairs was sent by the plaintiff to, the defendants from Delhi to Kolkata on 15.05.2010 through TCI freight in Delhi, cause of action further arose when demand of payment of Rs 33,00,750/-was raised by the plaintiff by sending demand letter on 16.06.2010, cause of action further arose when plaintiff sent another demand letter for payments, of dues in Delhi on 27.10.20T0, cause of action further arose on 23.02.2011 when the defendant sent letter to the plaintiff in Delhi for installing chairs on different venue i.e. Uttam Manch, cause of action further arose when fire broke out in Sarat 'Sadan on 17.10.2011 damaging the chairs supplied by plaintiff; the cause of action further arose when plaintiff sent another demand letter to the defendants on 14.11.2011 for clearing its due payment from Delhi, cause of action further arose in favor of plaintiff when plaintiff received a letter dated 22.11.2011 in Delhi for joint inspection at Sarat Sadan to assess the fire damage to 750 chairs on 29.11.2011, cause of action further arose plaintiff received letter dated 14.12.2011 in Delhi demanding received copy of supply of 750 chairs, cause of action further arose when plaintiff sent reply with documents for supply of 750 chairs on 07.01.2012,cause of action further arose on 05.09.2012 when legal notice was sent

to the defendants, cause of action further arose when despite receiving all the required documents plaintiff received another letter in Delhi dated 17.4.2013 asking plaintiff to submit the receipt for supplying of consignment, cause of action continue to arose till due/payment of Rs 50,83,155 with interest is paid to the plaintiff.

26. That the goods were manufactured in Delhi, consignments were sent through TCI freight in Delhi &Plaintiff firm business is conducted from Delhi and due payment is to be paid in Delhi. Further the actions mentioned in above para also took place in Delhi. Hence this Hon'ble Court has got territorial jurisdiction to entertain &adjudicate upon the present suit.

18. It is apparent that the appellant no. 1 issued advertisement **Mark A** regarding supply 750 chairs to be fitted and fixed at Sarat Sadan Hall at Behela i.e. designated site in Kolkata. The letter dated 05.12.2009 **Ex. PW1/B** whereby respondent no. 1 being lowest bidder was invited to execute agreements was issued in Kolkata. The agreements dated 10.02.2010 **Mark C & D** were executed in Kolkata. Work Orders **Mark E** and **Mark F** total amounting to Rs.33,00,750/- were issued in Kolkata in favor of the proprietor of the respondent no. 1. The chairs were delivered to the respondent no. 2 at designated site in Kolkata vide delivery receipts **Ex. PW1/H and Ex. PW1/I**. The respondent no. 1 met Chief Municipal Engineer (P&D) in Kolkata who asked the respondent no. 1 to install 750 chairs to another site i.e. Uttam Manch and letter bearing no. A&D/L/2444/10-11 dated 23.02.2011 **Mark O** was issued in Kolkata. The letter dated 22.11.2011 **Ex.PW1/R** for joint inspection to assess the loss caused by fire was issued in Kolkata. The letter bearing no. P&D/L/266/11-12 dated 14.12.2011 **Ex.PW1/T** whereby the respondent no. 1 was asked

to submit 'received copy' regarding supply of 750 chairs was issued in Kolkata. These facts combined together reflect that the cause of action required for filing the present suit was accrued in Kolkata.

19. However, the respondent no. 1 in plaint also mentioned various other facts which combined together reflect that part of cause of action has also accrued in Delhi in favour of the respondent no. 1 and this court is having territorial jurisdiction to entertain and try the suit. The respondent no. 1, a proprietorship firm, was conducting business of supplying high quality cinema-auditorium chairs throughout India under name & style of M/s Rana Chairs in Delhi. The respondent no. 1 received Work Orders dated 10th February, 2010 bearing no. CMA & TP/22/09-10 for 231 chairs @ 4401/chair amounting to Rs.10,16,631/- **Mark E** and bearing no. CMA & TP/23/09-10 for 519 chairs @ 4401/chair amounting to Rs.22,84,119/- **Mark F** (total amounting to Rs. 33,00,750/-) in Delhi. The respondent no. 1 purchased the raw materials in Delhi to execute work orders and chairs were manufactured in Delhi at the business premises of the plaintiff. The respondent no. 1 sent two Performa Invoices **Mark G1 and G2** in pursuance of Way Bill Form-50 both dated 16.04.2010 from Delhi. The respondent no. 1 dispatched two consignments vide Invoices **Mark K** and **Mark J** for delivery of chairs at designated site vide delivery receipts **Ex. PW1/H and Ex. PW1/I** from Delhi. The Supreme Court in **A.V.M.Sales Corporation V M/S Anuradha Chemicals Pvt.Ltd,** Special Leave Petition (C) No. 10184 Of 2008 decided on 17th January, 2012 as referred by the

respondent no. 1 regarding accrual of cause of action at particular place held as under:-

> **8. It has often been stated by this Court that cause of action comprises a bundle of facts which are relevant for the determination of the lis between the parties. In the instant case, since the invoices for the goods in question were raised at Vijayawada, the goods were dispatched from Vijayawada and the money was payable to the Respondent or its nominee at Vijayawada, in our view, the same comprised part of the bundle of facts giving rise to the cause of action for the Suit.**

20. The respondent no. 1 sent letters dated 16.06.2010 **Mark M** and 27.10.2010 **Mark N** for release of payment from Delhi. The perusal of Work Orders and Agreements reflects that place of payment was not fixed or specified therein. Another Bench of this Court in **Satya Pal V Slick Auto Accessories Pvt. Ltd. & others,** RSA No. 40/2013 decided on 05th March, 2014 upheld the findings given by the trial court to effect that the courts at Delhi had territorial jurisdiction because the payment was to be made in Delhi in as much as once no place of payment is specified, the debtor has to seek the creditor, and since the creditor/plaintiff was at Delhi, therefore, payment has to be made at Delhi and part of the cause of action will accordingly arise at Delhi and further observed that it is a well-established principle of law that where, under a contract no place of payment is specified, the debtor must seek his creditor and therefore a suit for recovery is maintainable at the place where the creditor resides or works for gain, because a part of the cause of action arises at that place also with the contemplation of Section 20 (c) of the Code of Civil Procedure. In the

present case also, the appellant no. 1 was required to make payment to the respondent no. 1 at Delhi.

21. The respondent no. 1 received letter bearing no. A&D/L/2444/10-11 dated 23.02.2011 **Mark O** in Delhi and sent letter dated 25.07.2011 **Ex, PW1/P** from Delhi. The respondent no. 1 received letter bearing no. P&D/L/266/11-12 dated 14.12.2011 **Ex.PW1/T** for submitting 'received copy' regarding supply of 750 chairs in Delhi and sent reply dated 07.01.2012 **Ex. PW1/U** from Delhi. The appellant no. 1 sent letter dated 24.01.2012 **Ex.PW1/V** to the respondent no. 1 in Delhi. The respondent no. 1 sent a legal notice dated 05.09.2012 **Ex. PW1/W** to the officers of the appellant no. 1 and letter dated 17.04.2013 **Ex. PW1/X** from Delhi. In view of these facts it is established that entire transaction pertaining to supply of 750 chairs was partly executed in Kolkata and partly executed in Delhi and as such entire transaction is having multiple jurisdiction. It cannot be said that entire cause of action for filing the present suit only accrued at Kolkata. The part of cause of action also accrued at Delhi. Mere issuance of advertisement Mark A, execution of two agreements dated 10.02.2010 **Mark C & D,** issuance of Work Orders **Mark E** and **Mark F** and delivery of chairs at designated site in Kolkata vide delivery receipts **Ex. PW1/H and Ex. PW1/I** do not exclude the territorial jurisdiction of Courts at Delhi completely. The Supreme Court in **Kusum Ingots & Alloys Ltd. V Union of India and another,** (2004) 6 SCC 254 also observed that even if a small part of the cause of action accrues within the territorial jurisdiction of a High Court, the Court will have the jurisdiction to entertain the petition

under Article 226 of the Constitution. The Supreme Court in **Alchemist Ltd. & another V State Bank of Sikkim & others,** (2007) 11 SCC 335 held that the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or an essential part of the *lis* between the parties. If it is, it forms a part of the cause of action. If it is not, it does not form a part of the cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered. The acts as detailed hereinabove and accomplished in Delhi are integral, material and essential parts of entire transaction of supply of 750 chairs at designated site.

22. The arguments advanced by the learned Senior Counsel for the appellants that Court at Delhi does not have territorial jurisdiction is without any legal force. The decision delivered in **Harshad Chiman Lai Modi V DLF Universal Ltd. & another,** 2005 (7) SCC 791 does not provide any support to the arguments advanced by the learned Senior Counsel for the appellants as in present case jurisdiction was not conferred either at Kolkata or Delhi with the consent of the parties but under given facts and circumstances of case, territorial jurisdiction was vesting in both Kolkata and Delhi. Accordingly this court is having territorial jurisdiction to entertain and try the suit.

23. The present appeal also needs consideration from angle of stage of raising objection as to territorial jurisdiction of the Court. Section 21 CPC deals with objections to jurisdiction. It reads as under:-

21. Objections to jurisdiction. — (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

24. The objections pertaining to territorial jurisdiction of the court is required to be taken in the court of first instance before settlement of issues and shall not be allowed by any appellate or revisional court unless there is a consequent failure of justice. In **Harshad Chiman Lal Modi v. DLF Universal Ltd.** AIR 2005 SC 4446 it was observed as under:-

The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible

opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at the subsequent stage.

25. The appellants in application bearing IA no. 4956 of 2016 under Order IX Rule 13 CPC admitted that summons were served on 11.12.2013 and because of ill legal advice given by the local advocate about dismissal of suit due to lack of territorial jurisdiction did not contest the suit. The defendants in suit were proceeded *ex-parte* vide order dated 27.05.2014. The judgment and decree under challenge was passed on 17.09.2015. The appellants did not take any step to contest the suit despite service of summons on 11.12.2013 without any justified reason. The plea of the appellants that the appellant no. 1 acted under ill advice given by the local advocate is without any basis and does not appeal to reasons. The appellants were having sufficient opportunity to contest the suit and to raise objection regarding territorial jurisdiction after service of summons before the learned Single Judge by participating in trial of the case. The appellants cannot be allowed to take advantage of their own wrongs and negligence and has failed to establish consequent failure of justice. The appellants under given facts and circumstances of case cannot be allowed to take or raise objection pertaining to lack of territorial jurisdiction.

26. The learned Senior Counsel for the appellants argued that no notice under section 586 of the Kolkata Municipal Corporation Act, 1980 was served on the appellant no. 1 which is a mandatory requirement before institution of the present suit and hence suit was

liable to be dismissed. The counsel for the respondent no. 1 argued that legal notice dated 05.09.2012 was served upon the officers of the appellant no. 1 before institution of suit and as such suit is maintainable.

27. Section 586 of the Kolkata Municipal Corporation Act, 1980 reads as under:-

586. Notice, limitation and tender of amends in suits against the Corporation, etc.- (1) No suit shall be instituted in any court having jurisdiction against any municipal authority or any officer or employee of the Corporation or any person acting under the direction of any municipal authority or any officer or employee of the Corporation in respect of any act done, or purporting to be done under this Act or the rules or the regulations made thereunder, until the expiration of one month next after a notice in writing has been delivered or left at the office of such authority or at the office or the residence of such officer or employee or person, stating—

(a) the cause of action,

(b) the name and residence of the intending plaintiff, and

(c) the relief which such plaintiff claims.

(2) Every such suit shall be commenced within four months next after accrual of the cause of action, and the plaint therein shall contain a statement that a notice has been delivered or left as required by sub-section (1).

(3) If the municipal authority, at the office of which, or the officer or the employee of the Corporation or the person acting under the direction of any municipal authority or any officer or employee of the Corporation, at the office or the residence of whom, a notice has been delivered or left under sub-section (1), satisfies the court having jurisdiction that the relief claimed was tendered to the plaintiff before the institution of the suit, the suit shall be dismissed. —

(4) Nothing in the foregoing sub-section shall apply to any suit instituted under section 38 of the Specific Relief Act, 1963 (47 of 1963)

28. It is apparent from bare reading of section 586 that no suit shall be instituted in any court until expiration of one month next after a notice in writing has been delivered or left at the office of such authority or at the office or the residence of such officer or employee or person. The respondent no. 1 in plaint and PW1 in affidavit Ex. PW1/1 mentioned that the respondent no. 1 sent a legal notice dated 05.09.2012 **Ex. PW1/W** to the officers of the appellant no. 1 who were arrayed as defendants in original suit which was not replied on behalf of the appellants. The suit was filed in year of 2013. The issuance and service of legal notice dated 05.09.2012 **Ex.PW1/W** is not disputed on behalf of the appellants. There may be irregularity in notice Ex. PW1/W but it is established that the respondent no. 1 has complied with requirement of section 586 of the Act. The suit was not bad for want of notice under section 586 of the Act.

29. The learned Senior Counsel for the appellants argued that the appellant no. 1 was not impleaded as necessary party as per section 4 (2) of the Kolkata Municipal Corporation Act, 1980. Section 4(2) of the Act reads as under:-

4. The Corporation.- (1) x x x x x x
(2) The Corporation shall be a body corporate with perpetual succession and a common seal, and may by its name sue and be sued.
(3) x x x x x x x

30. It is correct that the respondent no. 1 in plaint did not implead the appellant no. 1 as one of the necessary parties as per section 4(2) of the Act. The respondent no. 1 initially impleaded the respondent no. 2/defendant no. 1/Director General (Town Planning)/, the defendant no. 2/N. B. Basu, the defendant no. 3/P.K.Dass and the defendant no. 4/Sankar Gosh who were officers of the appellant no. 1 as necessary parties. The respondent no. 1 vide statement dated 28.04.2014 made before the Joint Registrar preferred to delete the defendants no. 3 and 4 from array of the parties. The respondent no. 1 was required to sue the appellant no. 1 in its own name as per section 4(2) of the Act but the respondent no. 1 impleaded those officers of the appellant no. 1 who were directly responsible for management of affairs of the respondent no. 1. The non-impleading of the appellant no. 1 as necessary party may be an irregularity but it is not an illegality fatal to the case of the respondent no. 1 as no prejudice caused to the appellant no. 1.

31. The learned Senior Counsel for the appellant argued that the suit was without merit. The respondent no. 1 pleaded and proved necessary facts making the respondent no. 1 entitled to get relief. The respondent no. 1 pleaded and proved issuance of advertisement **Mark A** issued on behalf of the appellant no. 1 regarding supply of 750 chairs, execution of two agreements dated 10.02.2010 **Mark C & D** and Work Orders **Mark E** and **Mark F,** Way Bill Form-50, sending of two Performa Invoices **Mark G1 and G2,** delivery of 750 chairs vide delivery receipts **Ex. PW1/H and Ex. PW1/I,** service of legal notice dated 05.09.2012 **Ex. PW1/W** besides other relevant facts. The facts

pleaded and proved by the respondent no. 1 remained unchallenged and unrebutted. It cannot be said that suit was without merit.

32. The learned Single Judge in judgment and decree dated 17.09.2015 held that there is nothing on record which could suggest that the prayers sought in the plaint could not be granted as the receipt of chairs was not rebutted and request for installation of the chairs at Sarat Sadan, Behata was acknowledgement of the acceptable and good quality of the chairs; the letter dated 17.04.20I3 was an afterthought and an endeavour to escape the acknowledged liability to pay the sale consideration. We are of the opinion that the learned Single Judge has considered all relevant issues before passing the judgment and decree dated 17.09.2015 which does not call for any interference.

33. The present appeal does not merit consideration and hence dismissed on grounds of delay as well as being without merits. The appeal along with pending applications if any stands disposed of.

SUDHIR KUMAR JAIN, J.

SURESH KUMAR KAIT, J.

JULY 04, 2022
'N/S'