

OD 3

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/53/2023
with
CS/25/2014
IA NO.GA/1/2023

RASHMI METALIKS LIMITED
VERSUS
SONEKO MARKETING (P) LIMITED

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE UDAY KUMAR
Date : 4th July, 2023.

Appearance:
Mr. Ranjan Bachawat, Sr. Adv.
Mr. Sakya Sen, Adv.
Mr. Subhankar Nag, Adv.
Mr. Chayan Gupta, Adv.
Mr. Avishek Guha, Adv.
Ms. Arunika Dutta, Adv.
Ms. A. Chopra, Adv.
Ms. Debarati Das, Adv.
...for the appellant.

Mr. Debnath Ghosh, Adv.
Mr. Biswaroop Mukherjee, Adv.
Ms. Saheli Bose, Adv.
..for the respondent.

The Court : The appeal is arising out an order passed by the learned Single Judge in connection with an application for setting aside of a decree dated 16th August, 2022.

The learned Single Judge had dismissed the said application on the ground that the cause list dated 19th April, 2022 would show that the suit appeared before a learned Single Judge and the petitioner/appellant did not take any steps even after it was transferred to the undefended suit list. Thereafter, the matter

appeared again on 5th May, 2022 and after the evidence was concluded, the suit was decreed ex parte on 16th August, 2022.

The primary ground for refusing to recall the ex parte decree was inaction and lack of due diligence on the part of the petitioner/appellant to take steps in the suit.

Mr. Ranjan Bachawat, learned Senior Counsel representing the appellant, submits that the ex parte decree was without jurisdiction as it was passed in the non-commercial jurisdiction inasmuch as the advocate-on-record of the plaintiff had failed to furnish the correct number of the suit after it was transferred to the Commercial Division and was directed to be heard as a commercial suit.

Mr. Bachawat has referred to the letter dated 4th March, 2019, addressed to the advocate-on-record of the decree-holder by which a request was made to furnish the commercial suit number after re-numbering pursuant to the order of the Hon'ble Division Bench dated 25th February, 2019. It is submitted that the written statement was affirmed within the period prescribed and there has been no laches on the part of the appellant. It was further argued that in view of the fact that the suit was not heard in the Commercial Division following the prescribed procedure thereunder, the decree is a nullity irrespective of the fact that the learned Single Judge on the relevant date also had jurisdiction to try and determine the commercial suit.

Mr. Debnath Ghosh, learned Counsel representing the decree-holder/respondent, submits that the appellant had due notice of the matter and, in fact, the matter appeared before the learned Single Judge on several dates. The plea that the appellant was prevented from filing the written statement due to non-

furnishing of the commercial suit number is a clear afterthought as the department was directed to re-number the suit and it was the duty of the advocate-on-record to approach the department and file the written statement with the re-number after it was transferred to the Commercial Division.

The facts emerging from the pleadings and the record of the Court is that the Co-ordinate Bench presided over by one of us (Soumen Sen, J.) by an order dated 25th February, 2019 directed that suit to be re-numbered as a commercial suit and the appellant/defendant was directed to file written statement within three weeks from that date. On and from 25th February, 2019, the suit can only be heard by the learned Single Judge having the determination that is to say to try the suit as a commercial suit. A separate list of commercial suit is required to be published and the suit is required to be heard following the procedure under the Commercial Courts Act, 2015. Once a suit is directed to be heard as a commercial suit, the procedure prescribed under the Commercial Courts Act, 2015 is required to be followed. It involves filing of a statement of truth, discovery and inspection within the stipulated time and in the manner as prescribed under the relevant rules.

It is not in dispute that consequent upon the suit being transferred as commercial suit it was not heard as a commercial suit following the prescribed procedure under the Commercial Courts Act, 2015. The learned Single Judge has proceeded to hear the suit as an ordinary suit and not as a commercial suit. Although on the date fixed the Court was wearing two hats the procedures are different and distinct. Admittedly, consequent upon the suit being transferred to a Commercial Division, statement of truth and other formalities were not complied with. The suit was not ready to be heard as a commercial suit in that regard.

However, at the same time, it cannot be ignored that the defendant/appellant ought to have filed the written statement in the department and the advocate-on-record could not have waited for a reply furnishing the re-numbering of the suit, after it was transferred as a commercial suit. The lack of knowledge, we presume, with regard to the relevant rules is manifest from the conduct of the advocate-on-record of the appellant.

It was also the duty of the advocate-on-record to keep a watch on the list and to approach the Commercial Court with a prayer for acceptance of the written statement as the time to file the written statement would expire and the consequence of non-filing could be fatal. The matter could have been brought to the notice of the Commercial Court disclosing the difficulty. The plaintiff was benefited by such lack of diligence and had proceeded with the suit ex parte in the ordinary original civil jurisdiction of this Court.

In view of the fact that the suit was heard as an ordinary original civil suit and not as a commercial suit following the procedure prescribed under the Commercial Courts Act, 2015 and the written statement was prepared within the period stipulated by the Hon'ble Division Bench, we think that an opportunity ought to have been given to the defendant by the learned Single Judge on such terms and conditions as may be deemed fit and proper having regard to the conduct of the appellant.

Taking into consideration the aforesaid factors, the time to file written statement is extended by three weeks from date, subject to payment of costs assessed at Rs.2 lakhs to the plaintiff and furnishing a cash security of Rs.50

lakhs to the Registrar, Original Side of this Court. The department shall not accept the written statement unless the aforesaid two conditions are fulfilled. In default of complying with either of the aforesaid conditions, the decree shall automatically revive without any further reference to this Court. The appellant shall comply with the requirement of Section 15(3) of the Commercial Courts Act, 2015 within two weeks from date.

In the event the cash security is furnished with the Registrar, Original Side of this Court, the same shall be invested in a short-term fixed deposit account yielding highest return and shall be kept renewed from time to time till the disposal of the suit.

Upon filing the written statement, the parties are directed to comply with the procedural matters as mentioned in the Commercial Courts Act, 2015. Liberty to mention for early disposal of the suit after the suit is ready for hearing.

The appeal being APO/53/2023 and the application being IA No.GA/1/2023 stand disposed of.

[SOUMEN SEN, J.]

[UDAY KUMAR, J.]