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A.No.1816 of 2023

in

C.S.No.971 of 2010

P.T. ASHA, J.

The 3rd defendant/Applicant has filed this Application seeking to condone the delay of 1801 days in setting aside the ex parte decree dated 09.08.2023.

2. Before proceeding to discuss the application on hand, it is necessary to set out a few facts relating to the institution of the suit and the decree having been passed. The parties are referred to in the same status as in the suit. The plaintiff has filed the aforesaid suit for declaration and injunction in respect of the film "PISTHA".

3. It is the case of the plaintiff that in respect of the film "PISTHA" they had obtained the exclusive copyright from the producer, the 2nd defendant under an agreement dated 18.06.2009 and have the right to broadcast the same in any mode without any restriction of the geographical area. The 2nd defendant had authorised the 4th defendant Laboratory to deliver the sound and picture negatives to the plaintiff and the 4th defendant had also



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given a confirmation letter dated 19.06.2009 in this regard. While so, the plaintiff would state that the said film was released in the form of a DVD by the 3rd defendant and freely sold in the market. By this sale the exclusive copyright of the plaintiff has been infringed and the defendants 1 to 4 have made illegal profits and the plaintiff has suffered substantial loss. Therefore, the plaintiff had come forward to file the suit in question.

4. The records would show that the 1st and the 2nd defendant were served on 07.02.2011. The 3rd defendant was served on 09.03.2011 and the 4th defendant was served on 11.03.2011. Despite being served with the summons, defendants 1 to 4 had not appeared and therefore they were set ex parte on 21.07.2014 and ultimately an ex parte decree dated 07.08.2016 came to be pronounced.

5. After the ex parte judgement had been pronounced, the 3rd defendant alone has come forward with this Application. In the affidavit filed in support of the said Application, the 3rd defendant



would submit that they had come to learn about the ex parte decree only during the trial in another suit pending between the parties in C.S.No.974/2010. It is only after they had verified the status that they had come to know that an ex parte decree had been passed. The 3rd respondent would submit that they had not been served with the summons since they had shifted their place business from shop No.135 and 137 Babukhan Estate, Basheerbagh, Hyderabad-1 in the year 2010 and was running their business at H.No-1-2-56/42 & 42A, Advocate Colony, Gogan Maha, Doalguda, Hyderabad -500029.

6. The 3rd defendant would further submit that it is only after 2015 when they had filed their written statement in C.S.No.924/2015 that the plaintiff has been addressing correspondence to the present address. The 3rd defendant would therefore submit that as soon as they became aware of the ex parte decree, the present Application has been filed. However, in the process, a delay of 1801 days has arisen and they would submit that the delay is only for the aforesaid reasons and would seek to have



the same condoned.

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7. Per contra, the learned counsel appearing on behalf of the plaintiff/1st respondent would submit that the allegations contained in the affidavit filed in support of the condone delay Application is absolutely false. The 3rd defendant was very much aware about the institution of the suit since summons have been served on them and knowing fully well about the same, the 3rd defendant had not chosen to file an Application at the earliest. Even going by the statement in the counter they had come to know about the instant suit in the year 2015. However, no steps were taken to set aside the ex parte decree then. Therefore, she would pray that the Application should be dismissed.

8. Heard the learned counsels.

9. Since the primary ground on which the 3rd defendant has filed the Application was that the summons had not been served upon them, this Court had called for the summons that had been



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served. A perusal of the same would show that the 3rd defendant had received the summons at their address at shop No.135 and 137 Babukhan Estate, Basheerbagh, Hyderabad-1 on 09.03.2011 and the contention that from 2010 they have been functioning at H.No-1-2-56/42 & 42A, Advocate Colony, Gogan Maha, Doalguda, Hyderabad-500029 appears on the face of the records to be an absolutely false statement. Further, the 3rd defendant has in their affidavit submitted that they had come to know about the decree in the instant suit only when they were contesting another suit C.S.No.924/2015. However, the affidavit is absolutely silent about the date on which the 3rd defendant had come to know about the ex parte decree.

10. Considering the fact that the 3rd defendant has come to Court with an absolutely false statement that they have not been served with the suit summons which has been proved to be false and no convincing and sufficient reasons have been produced on the side of the 3rd defendant, the above Application is dismissed.

However, there shall be no order as to costs.



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