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

+ CM(M) 289/2023, CM APPL. 8971/2023--stay

M/S SARODEEP POLYMERS LIMITED Petitioner

Through: Ms. Snehlata Jha and Mr. S.K.
Bhaduri, Advs.

versus

PRINCE GENERATOR PRIVATE LIMITED Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

08.05.2024

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1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 21.01.2023 passed by the learned SCJ-cum-RC, West, Tis Hazari Courts, Delhi ("Trial Court") in Misc. S.C.J. No. 220/2019 titled as "*Prince Generators Private Limited versus Sarodeep Polymers Limited*" whereby the learned trial court allowed the application of the respondent under Section 5 of the Limitation Act seeking condonation of delay in filing the application under Order IX Rule 9 read with Section 151 of Code of Civil Procedure, 1908 ("CPC").

2. Learned counsel for the petitioner submits in the present petition an application for condonation of delay in filing the application under Order IX Rule 9 was allowed by the learned trial court despite more than 1 year of delay in filing the same and on false and frivolous grounds taken by the respondent in the application.

3. The narration of facts in brief are that the respondent had filed a suit



for recovery of Rs. 2,45,740/- against the petitioner in March, 2008. Thereafter, the petitioner filed the written statement in response to the suit. Notably, the respondent had last appeared before the learned trial court on 24.11.2017 and subsequently on various dates of hearing, he did not appear i.e. on 24.04.2018, 28.05.2018 and 30.07.2018. Lastly, the learned trial court after observing the lackadaisical approach of the respondent, dismissed the suit in default for non-appearance and for want of prosecution vide order dated 11.10.2018.

4. Learned counsel submits that an application dated 02.11.2019 under Order IX Rule 9 read with section 151 of CPC was moved by respondent along with an application under Section 5 of the Limitation Act seeking condonation of delay in filing the same. Reply thereto was subsequently filed by the petitioner and written submissions were also filed by the petitioner inter alia stating that the applications filed by the respondent was false and frivolous. However, the learned trial court did not consider the facts & circumstances of the case as well as the arguments with the judgements relied upon by the petitioner and vide the impugned order proceeded to allow the application under Section 5 of the limitation Act.

5. Learned counsel further submits that the petitioner had filed its elaborative written submissions taking a strong objection that the word 'sufficient cause' in Section 5 of the Limitation Act would apply only where a party has been acting with due diligence and without any negligence. However, the same was overlooked by the learned trial court.

6. The learned counsel submits that the learned trial court in its order dated 11.10.2018 has noted that none appeared for the respondent for the last 5 dates of hearing and thus observing the conduct of the respondent and



lack of prosecution, the suit was dismissed. Moreover, the application under Order IX Rule 9 CPC is dated 02.11.2019 i.e. which is moved after passing of more than 1 year from the order dated 11.10.2019. Further, no sufficient ground had been shown by the respondent in the application seeking condonation of delay in filing the aforesaid application.

7. Learned counsel vociferously contends that no affidavit of any person or any document has been filed in the court to show the alleged noting of the date of hearing as 24.11.2018 instead of 24.04.2018 on 03.02.2018; ground taken by the respondent in condonation of delay application. Furthermore, it is incomprehensible that after dismissal of the suit if any person appears on the wrongly noted date, he would automatically come to know that the suit was dismissed on 11.10.2018 and would not have waited till 11.09.2019 to file an application. Moreover, in any given scenario, the learned trial court would not give a date of more than 1 year, which was not even given in the instant case. The orders are duly uploaded on the internet, it is the lack of diligence on the part of respondent to have kept himself unaware of the stage/status of the case

8. Concluding submissions, the learned counsel submits that grounds taken by the respondent in his applications are false and frivolous and a man of ordinary prudence would have been able to carry out enough diligence to know the status of the suit. The learned counsel placed reliance on **Balwant Singh (dead) vs Jagjit Singh & Ors** Civil Appeal No. 1166 of 2006, **Shri Victor Alburquerque vs Saraswat Co-operative Bank** and **Majji Sannemma @ Sanyasirao vs Reddy Sridevi** in support of his arguments.

9. None has appeared on behalf of the respondent today or on the previous dates of hearing before this court. No reply has been filed either.



10. Submissions heard, record perused.
11. While disposing of the application moved on behalf of the respondent, the learned Trial Court has observed vide impugned order as under:

“It is admitted fact that there is continuous litigation between both the parties. Perusal of the present file shows that the plaintiff has been diligently pursuing the present matter since its inception and that there seems to be no occasion or any malafide intention on his behalf to avoid the present proceedings. Wrong noting in the dairy by the clerk, counsel or an employee may usually happen and the litigations ought not to suffer because of the same. The plaintiff has been able to show sufficient cause not filing the accompanying application under Order IX Rule 9 CPC read with Section 151 CPC within the prescribed period of limitation and supporting document has also been placed on record to show his bonafide. Therefore, in view of the facts and circumstances of the present case and that the application under Order IX Rule 9 CPC read with Section 151 CPC be decided on its merits. The present application under Section 5 of the Limitation Act is allowed and the delay in filing the present application under Order IX Rule 9 CPC read with Section 151 CPC stands condoned. Application stands disposed of accordingly”.

12. Apparently, the learned Trial Court has not considered the case law cited on behalf of the parties and the reasons of delay cited by the respondent in his applications moved under Order IX Rule 9 CPC and under Section 5 of the Limitation Act and the written submissions placed on record by the petitioner. The learned Trial Court has further failed to consider the important fact that is when the aforesaid applications were moved on behalf of the respondent.

13. Accordingly, the impugned order is set aside, the matter is remanded back to the learned Trial Court for re-consideration of the applications moved under Order IX Rule 9 CPC and under Section 5 of the Limitation Act within six weeks from passing of this order after granting an opportunity



to both the parties of having been heard.

14. With above observations, the present petition along with the application stands disposed of.

SHALINDER KAUR, J.

MAY 08, 2024

SDS