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

% *Date of Decision: 24.01.2024*

+ **RFA(OS)(COMM) 5/2021 CM APPL. 23910/2021**

CANARA BANK

..... Appellant

Through: Mr.Rajesh Kumar Gautam,
Mr.Anant Gautam, Mr.Dinesh
Sharma, Ms.Avani and Ms.Shiavni
Sajal, Advocates

versus

IRIS COMPUTERS LTD AND ANR..

..... Respondents

Through: Mr.A.B.Pandey, Advocate for R1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (Oral)

1. Canara Bank (hereafter '**the appellant**') has filed the present intra court appeal impugning the judgment and decree dated 06.03.2019 (hereafter '**the impugned judgment**') passed by the learned Single Judge in CS (COMM) 471/2016 captioned ***IRIS Computers Ltd. v. State Bank of India & Ors.***

2. The present appeal has been filed beyond the stipulated period of limitation application (CM Appl. No.23910/2021) has been filed by the appellant seeking condonation of delay of 767 days in filing the present appeal.



3. It is the case of the appellant that in terms of the impugned judgement, the learned Single Judge has directed issuance of a decree for a sum of ₹1,05,61,556/-, along with simple interest at the rate of 6% per annum, in favour of the respondent. Additionally, the Court has also directed that if the payment is not made within a period of eight weeks, respondent no.1 would also be entitled for a simple interest at the rate of 8% per annum on the decretal amount.

4. Respondent no.1's claim rests on a Letter of Credit (hereafter '**the LC**') admittedly issued by the appellant. Respondent no.1 claimed that it had supplied the goods to the purchaser on the security of the LC and had also furnished all the documents as required under the LC. However, the appellant had failed to honour its obligation.

5. According to the appellant bank, there were some discrepancies in the Bills of exchange (one of document required to be furnished along with LC) and the Lorry Receipt (hereafter '**the LR**') in original was not furnished along with the LC. The learned Single Judge examined the said contention and found it to be unpersuasive. Accordingly, allowed the suit for recovery of the amount of the LC along with interest.

6. The learned counsel appearing for the appellant bank contended that the delay in filing the appeal was caused as its name was deleted from the array of parties in terms of the order dated 19.02.2016 of this Court. Therefore, the appellant bank had stopped appearing in the matter. He stated that the order dated 19.02.2016 was subsequently corrected but the appellant bank had no knowledge of the same. He



states that the learned Single Judge had issued a notice to the learned counsel for the appellant bank as well as the appellant bank on 03.10.2018 and directed the appellant bank to file an affidavit on the question as to whether any security was taken from the beneficiary respondent no. 2, M/s. Click Telecom Private Limited (arrayed as defendant No.3 in the suit), before opening the LC. In compliance of the order dated 03.10.2018, the appellant bank had filed an affidavit dated 12.11.2018 on the said issue. And the learned Single Judge passed the impugned judgement after the said affidavit was filed.

7. The appellant bank claims that it was not informed of the impugned judgment. It became aware of the same on 15.02.2021, on receiving the notice of the proceedings initiated for execution of the decree.

8. The explanation provided in respect of the delay in filing the present appeal is unpersuasive. First, the contention that the appellant bank was deleted from the array of the parties in the suit, is erroneous. In fact, the appellant bank was never deleted as a defendant and no amended Memo of Parties deleting the appellant as a defendant was filed by respondent no.1. The record shows that the matter was listed before the concerned Joint Registrar on 19.02.2016. On the said date, the learned counsel appearing for respondent no.1 (plaintiff in the suit) made a submission that he did not want to proceed against State Bank of India and the appellant (defendant nos.1 and 2 in the suit). In the said context, respondent no. 1 (the plaintiff in the suit) was directed to file amended memo of parties. Respondent no.1 had thereafter, filed an



application for correction of the order dated 19.02.2016 as according to the learned counsel for respondent no.1, he had not made any submission giving up its claim against the appellant (arrayed as defendant no.2). It was stated that the statement was confined only to State Bank of India (arrayed as defendant no.1). The said application was allowed by the learned Joint Registrar on 15.07.2016. Respondent no.1 did not desire to proceed against the negotiating bank (State Bank of India) but it had not given up its claim against the appellant.

9. It is important to note that the said application for correction (IA no.5374/2016) was listed before the concerned Registrar on 02.05.2016 and on that date proxy counsel for the appellant was present. The application was not allowed on the said date as the concerned Joint Registrar considered it proper to place the application before the learned Joint Registrar, who had passed the order dated 19.02.2016.

10. In view of above, the contention that the appellant was not aware of the proceedings in the suit on account of it being deleted from the array of parties, is unmerited. The appellant bank did not actively contest the proceedings and was not represented before the learned Trial Court.

11. On 03.10.2018, this Court issued a notice to the learned counsel for appellant who had entered appearance on behalf of the appellant bank as well as to the Legal Manager of the appellant bank. The court directed the appellant bank to file an affidavit before the next date of hearing to the effect as to whether prior to opening of LC in question at



the instance of respondent no..2, the appellant had taken any deposit/security from respondent no.2. Apparently, the notice was duly served upon the appellant bank as well as its learned counsel. More importantly, the appellant bank complied with the said directions and filed an affidavit on 12.11.2018. Thus, there is no merit in the contention that the appellant was not aware that respondent no.1 was proceeding against it in the suit. Notwithstanding, the appellant bank chose not to pursue the said proceedings.

12. The appellant bank now blames its advocate and claims that he had left the country and therefore, was not pursuing the matter. Respondent no.1 disputes that the appellant's advocate had migrated overseas. However, it is not necessary to examine this controversy. This is because there is no explanation whatsoever as to why after receiving the notice and after filing an affidavit in the suit the appellant bank did not took any active steps in the suit. Also, no explanation has been provided by the appellant bank as to why it chose not to inform itself as to the proceedings in the suit.

13. The object of the Commercial Courts Act, 2015 is to ensure expeditious disposal of the matter. The legislative policy no longer permits continuance of lackadaisical approach in pursuing the matter. The timeline as provided in under the Commercial Courts Act, 2015 are required to be complied with. In ***Government of Maharashtra (Water Resources Department) Represented By Executive Engineer v. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.:*** (2021) 6 SCC 460, the Supreme Court observed as under: -



58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression “sufficient cause” is not itself a loose panacea for the ill pressing negligent and stale claims.

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63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule....

14. In the present case, we find no credible explanation – except that the appellant has been grossly negligent – for the delay in filing the captioned appeal.

15. Accordingly, we reject the present application. Consequently, the appeal is also dismissed.

16. The amount deposited by the appellant with the Registry of this Court shall abide by the orders passed in the proceedings for execution of the decree in question.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 24, 2024

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