



\$~5

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

+ **FAO (COMM) 190/2023**

SPJ CARGO PRIVATE LIMITED

.....Appellant

Through: Mr Laksh Khanna, Mr Utkarsh Joshi,
Ms Anjali Menon and Ms Diksha
Suri, Advocates.

versus

RAYBAN FOODS PRIVATE LIMITED

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

18.09.2024

%

[Physical Hearing/Hybrid Hearing (as per request)]

1. This appeal is directed against the judgment and order dated 13.07.2023 passed by Mr Surinder S Rathi, learned District Judge, Commercial Court-03, Shahdara district, Karkardooma, Delhi.
2. Via the impugned judgment and order, the appellant's/plaintiff's application under Order IX Rule 9 of the Code of Civil Procedure, 1908 [in short "CPC"] has been dismissed.
3. The record shows that on 16.09.2022, the suit filed by the appellant/plaintiff was transferred from Commercial Court-02 to Commercial Court-03.
4. On 19.09.2022, Commercial Court-02 directed the file to be sent to the transferee court in line with the order dated 16.09.2022.

FAO (COMM) 190/2023

Page 1 of 4



5. On 19.09.2022, the Court Officer, i.e. Ahlmad, directed listing of the suit action before Commercial Court-03 on 28.09.2022.

6. Evidently, on 28.09.2022, both parties were not represented by their counsel. However, the trial court proceeded to dismiss the suit of the appellant/plaintiff for non-prosecution.

6.1 It is the submission of Mr Laksh Khanna, learned counsel, who appears on behalf of the appellant/plaintiff, that he had wrongly recorded the date given on 19.09.2022 as 28.10.2022.

6.2 The dismissal of the suit on 19.09.2022 propelled the appellant/plaintiff to file an application for restoration. The first application was preferred on 15.11.2022.

6.3 This restoration application was dismissed by the trial court on 15.12.2022 on the ground that it did not bear the signature of the appellant/plaintiff.

7. Thereafter, a second restoration application was filed on 31.01.2023, which was dismissed on 17.03.2023 on the ground that it was not accompanied by an application for condonation of delay.

8. The appellant/plaintiff, thereafter, filed another application on 09.05.2023, which was dismissed on 13.07.2023. This application was accompanied by a condonation of delay application. The trial court, however, dismissed the condonation of delay application as according to it, the period of delay had been wrongly calculated. Resultantly, the application for restoration was also dismissed.

9. The instant appeal has been filed against the dismissal of the third application for restoration.



9.1 Notice in this appeal was issued on 19.09.2023.

10. Mr Ashish Pathak, learned counsel, has entered appearance on behalf of the respondent/defendant.

10.1 Mr Pathak says that the parties have arrived at a settlement *vis-à-vis* their *inter se* disputes.

11. Mr Laksh Khanna and Mr Utkarsh Joshi, learned counsel, who appear on behalf of the appellant/plaintiff, say that they do not have any instructions, to that effect, from the appellant/plaintiff.

12. Be that as it may, the moot question that arises for our consideration is: whether the impugned judgment order should be sustained. According to us, the trial court has taken a very narrow view of the matter. Even if the delay was wrongly calculated, the learned Judge could have taken the longer timespan into account to determine whether delay ought to be condoned based on the assertions made in the application for condonation of delay.

13. The impugned judgment and order, passed by the trial court, has resulted in the appellant/plaintiff being disabled from having its suit tried on merits. As per the impugned judgment and order, the appellant/plaintiff has filed a suit for recovery of Rs 90.10 lakhs.

14. Therefore, having regard to the aforesaid circumstances, we are inclined to set aside the impugned judgment and order.

14.1 It is directed accordingly.

14.2 The suit shall stand restored to its original number and position.

15. Counsel for the parties will appear before the trial court on 30.09.2024.

16. Since we are told by Mr Pathak that the parties have arrived at a

FAO (COMM) 190/2023

Page 3 of 4



settlement, an appropriate application can be jointly moved in that behalf.

17. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

AMIT BANSAL, J

SEPTEMBER 18, 2024/kd

[Click here to check corrigendum, if any](#)