



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

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Judgment reserved on: 23.10.2024

Judgment delivered on: 29.11.2024

+ CM(M) 1466/2022 & CM APPL. 56160/2022

MGO INDIA PRIVATE LIMITED THROUGH ITS
AUTHORISED REPRESENTATIVEPetitioner

versus

ABHINANDAN GUPTARespondent

Memo of Appearance

For the Petitioner: Mr. Bilal Ali with Mr. C K Bhatt, Advocates.

For the Respondent: Mr. Ankit Kothari, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner, who had filed a summary suit under Order XXXVII CPC, is aggrieved by the order dated 19.09.2022 passed by learned Trial Court whereby the learned Trial Court has observed that there was no delay on the part of defendant in entering appearance.
2. The facts lie in a very narrow compass.
3. Petitioner had filed the aforesaid recovery suit on 20.12.2021.

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4. Learned Trial Court directed issuance of summons returnable 02.02.2022.

5. Though the plaintiff (petitioner herein) submitted on record an affidavit of service, the learned Trial Court, specifically, observed that the process had been received back unserved with the report “left without instructions”.

6. Fact remains that on 02.02.2022, there was appearance from the side of the defendant as well. His counsel joined proceedings through videoconferencing and apprised that the defendant had not received any copy of plaint and documents. Learned Trial Court directed the same to be supplied during the course of the day through WhatsApp and email.

7. Simultaneously, defendant was also given liberty to file appearance within the stipulated period, after receiving such copies.

8. The copy of the plaint was stated to have been supplied same day.

9. As per Order XXXVII Rule 3 CPC, the defendant was required to enter appearance within a period of 10 days of service.

10. It seems that, in his over enthusiasm and without there being any service of *summons for judgment*, defendant, instead of merely entering appearance, submitted *leave to defend* along with affidavit. The same was transmitted by him through electronic mode on email ID of learned Trial Court as well as to plaintiff on 12.02.2022.

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11. Interestingly, defendant also moved an application seeking condonation of delay in entering appearance on the ground that delay had occasioned on account of ongoing pandemic of Covid-19. It was also reiterated that even otherwise, the *leave to defend* had been sent to the email ID of the learned Trial Court on 12.02.2022 itself.

12. The aforesaid application was opposed by the plaintiff (petitioner herein) who claimed that there was no sufficient cause explained by the defendant for belated entering of appearance. It was claimed that defendant had rather been served much prior to 02.02.2022 and since there was no appearance within the stipulated period of 10 days, defendant was not entitled to seek any condonation of delay. Curiously, plaintiff claimed in his reply that though the Defendant entered appearance through his Counsel on 02.02.2022, however, at no point of time during the entire proceedings of the matter till date, they bothered to inform the Court regarding the date on which he was actually served.

13. Plaintiff is aggrieved by the observations made by the learned Trial Court to the effect that there was no delay in entering the appearance.

14. Needless to say, the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which

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are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*.

15. In the present case, there is nothing to indicate the same.

16. Facts are lucid and clear and it cannot be said that there was any kind of delay in entering appearance.

17. Reason is two-fold.

18. Firstly, service upon defendant is to be reckoned only from 02.02.2022 and same day, the plaintiff was directed to supply complete set of the plaint through WhatsApp and email and, therefore, the period would start to run thereafter only.

19. Though the defendant was under obligation to mere enter appearance and in his over zealously, he went overboard and submitted application seeking leave to defend on 12.02.2022. His aforesaid action was obviously premature as the plaintiff had not even taken out *summons for judgment*.

20. Fact remains that such act on the part of the defendant can always be deemed as equivalent to entering in appearance. Moreover, this Court cannot lose sight of the fact that the appearance stood duly entered on 02.02.2022 itself when learned counsel for defendant had appeared before the learned Trial Court. Needless to emphasize that even otherwise if

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sufficient cause is shown, any delay in entering an appearance can always be condoned under Order XXXVII Rule 7 CPC.

21. Secondly and more importantly, at the relevant time, there was pandemic of Covid-19 and Hon'ble Supreme Court *IN RE: Cognizance for Extension of Limitation: (2022) 3 SCC 117* observed that the period falling from 15.03.2020 to 28.02.2022 was liable to be excluded. Para-5 of aforesaid judgment reads as under: -

“5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947] , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation

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period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

22. Therefore, the period of limitation which had started to run from 02.02.2022 stood suspended and got revived only on 01.03.2022. Irrespective of the fact that such period was only of 10 days, in view of the specific directions contained in the aforesaid judgment of Hon'ble Apex Court, the extended period was of further minimum of 90 days and, therefore, even otherwise, there was no reason to hold that there was any delay in entering appearance.

23. The learned Trial Court was, therefore, fully justified in holding the same and simultaneously directing the plaintiff to take steps for issuance of *summons for judgment*.

24. In view of aforesaid peculiar factual circumstances, there is nothing which may indicate any kind of impropriety or perversity in the impugned order. There is also nothing to indicate that defendant ever tried to take advantage of his own wrongs.



25. Finding no merit and substance in the present petition, the same is hereby dismissed.

(MANOJ JAIN)
JUDGE

NOVEMBER 29, 2024/dr

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