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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 34/2024 and CM Nos.9370/2024, 9371/2024 and 9372/2024**

KAZJIN TRADING PVT LTD. Appellant
Through: Mr Praveen Singhal, Advocate.
versus
ASHMA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU
ORDER
22.03.2024

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CM APPL. 9370/2024(Condonation of Delay)

1. The appellant has filed the present appeal impugning an order dated 25.08.2023 (hereafter *the impugned order*) passed by the learned Commercial Court rejecting the appellant's application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the application for restoration of the suit. Additionally, the learned Commercial Court also rejected the appellant's application under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (hereafter *CPC*) seeking restoration of the suit that was dismissed in default.

2. The appellant had instituted the suit [CS(COMM) 4435/2021 captioned *Kazjin Trading Pvt. Ltd. v. Asma*] for recovery of a sum of ₹12,92,035/- along with interest. The said suit was listed on 30.10.2021 and the learned Commercial Court directed issuance of summons on the appellant taking steps. The respondent was also called upon to file a written



statement within thirty days of the date of service.

3. The suit was thereafter listed on 10.02.2022. The summons issued to the respondent by speed post was returned unserved with the report reading as 'left'. The summons by registered post was not sent on account of failure on part of the appellant to deposit the postal stamps. Thus, the suit was adjourned for the appellant to take steps for issuance of summons at the correct address. And the matter was adjourned to 06.04.2022.

4. The order passed on 06.04.2022 is not on record. However, the suit was, thereafter, listed on 03.06.2022. Even as on the said date, the respondent remained unserved as the appellant had not filed any fresh address.

5. The perusal of the plaint also indicated that it was not duly verified in terms of Order VI Rule 15A of the CPC. The learned Commercial Court noted that in terms of Sub-rule (4) of Order VI Rule 15A of the CPC, the pleadings are not verified and the party cannot rely on such pleadings as evidence or for any other matter as set out therein. In view of the above, the learned counsel appearing for the appellant sought an adjournment to take remedial steps. The said request was acceded to and the matter was renotified on 24.08.2022.

6. The appellant did not take any steps for either complying with the provisions of Order VI Rule 15A of the CPC and the Delhi High Court Rules and Orders –Vol I Part C Chapter 1 Part K(b).

7. The suit was listed on 24.08.2022 and once again, the learned counsel



for the appellant sought further time to take remedial steps. At his request, the learned Commercial Court adjourned the hearing to 06.10.2022.

8. On 06.10.2022, none appeared on behalf of the appellant. The appellant had also failed to take any steps to comply with the provisions of the Commercial Courts Act, 2015 for which the matter was adjourned on prior two occasions, that is, on 03.06.2022 and 24.08.2022. Notwithstanding the inordinate delay, the learned Commercial Court granted one final opportunity to the appellant to take remedial steps, subject to deposit of cost of ₹1,000/- with DLSA, Central District. The learned Commercial Court also cautioned that failure to take remedial steps would result in dismissal of the suit for non-prosecution. The matter was thereafter listed for compliance on 21.12.2022.

9. On 21.12.2022, it was noted that the appellant had failed to deposit the cost as imposed by the order dated 06.10.2022. The appellant had also not taken remedial steps to bring the plaint in conformity with the provisions of the Commercial Courts Act, 2015, despite sufficient opportunity being granted. On that date also, none had appeared on behalf of the appellant. Accordingly, the learned Commercial Court dismissed the suit in default of appearance as well for non-prosecution.

10. The appellant filed an application under Order IX Rule 9 of the CPC read with Section 151 of the CPC seeking recall of the said order and restoration of the said suit. The said application was listed on 02.06.2023. However, on that date as well, none had appeared on behalf of the appellant. Notwithstanding the same, the learned Commercial Court listed the



application for consideration on 08.07.2023 and thereafter, on 25.08.2023. Concededly, the appellant's application seeking restoration of the suit was highly delayed. The only explanation for the delay furnished by the appellant was that it was under the erroneous impression that its counsel was diligently prosecuting the case. However, it was admitted that the appellant became aware of the dismissal of the suit only in the month of April, 2023. The appellant claimed that its Director was travelling and therefore, could not keep track of the suit.

11. The learned Commercial Court did not find any credence in the explanation provided by the appellant.

12. Concededly, the appellant has been less than diligent in pursuing the suit. As noted above, the appellant had not taken effective steps to serve the respondent despite sufficient opportunity, for almost ten months. The appellant had also not taken effective steps to ensure that the plaint is in conformity with the provisions of the Commercial Courts Act, 2015 inasmuch as each page of the plaint was not signed at the end.

13. Despite the number of opportunities granted to the appellant to cure the defects as well as to take steps for serving the respondent, the appellant had failed to do so. In the given circumstances, we cannot fault the decision of the learned Commercial Court to reject the application filed by the appellant for restoration of the suit.

14. It is also noted that the present appeal has been filed after a delay of 54 days. In addition, there is further delay of 26 days in re-filing.



15. The appellant has filed an application seeking condonation of delay in filing the appeal. There is no explanation whatsoever for the inordinate delay of 54 days. The only explanation provided for delay reads as under:

“4. That obtaining the certified copy of the order, the matter was forwarded to the company. After examination of the same, company decided to prefer the appeal before this Hon’ble Court. Instructions issued accordingly.

5. In this process, certain delay has been crept into the said delay is neither intentional nor deliberate but due to reason as explained above.”

16. Since there are no reasons for explaining the delay, the same cannot be condoned. It is also noted that the appellant has been less than diligent in pursuing the present appeal as none had appeared on behalf of the appellant on the previous two hearings.

17. The application seeking condonation of delay in filing the appeal is, accordingly, dismissed. Consequently, the appeal is also dismissed.

18. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 22, 2024
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