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

+ **RFA 497/2017**

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Date of Judgment: 18th May, 2017

MODDUS MEDIA PVT. LTD.

..... Appellant

Through: Mr. J.P.N. Gupta, Advocate with
Mr.Pankaj Kumar Singh, & Mr. I.M.
Singh, Advocate.

versus

M/s. SCONE EXHIBITION PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

CM No. 18654/2017 (for condonation of delay in re-filing the appeal)

This is an application for condonation of 101 days' delay in re-filing the appeal. Heard. For the reasons stated in the application, the same is allowed. The delay in re-filing the appeal is condoned.

The application is disposed of.

CM No. 18652/2017 (for condonation of delay in filing the appeal)

1. This is an application under Section 5 of the Limitation Act, 1963 read with section 151 of the Code of Civil Procedure for condonation of 400 days' delay in filing the appeal against the impugned judgment

and decree dated 31.08.2015 passed by the learned Additional District Judge-04 (in short 'ADJ'), Saket Courts, New Delhi in Civil Suit No. 113/2014.

2. It is pleaded that their counsel Sh. Pradeep Kumar, Advocate, having registration no. D-2060 of 2006, resident of B-62, Ram Dutt Enclave, Uttam Nagar, Delhi and chamber no. 853, C/o Shri Shashi Kumar Shukla, Dwarka Court Complex, New Delhi, has stopped attending the proceedings w.e.f. **10.11.2014**. Their counsel assured them that there would not be any problem and the case would go in their favour.
3. **During the pendency of the suit,** the Authorized Representative/Managing Director (in short 'AR') of the appellant/defendant company Sh. Pravesh Kumar Mishra talked to the counsel several times. Their counsel informed him that he was taking care of the matter. It is further alleged that after passing of the impugned judgment and decree dated 31.08.2015, their counsel informed them that civil suit filed by the respondent/plaintiff company has been dismissed by the court and there is no necessity to be panicked and they requested their lawyer to provide copies of documents and the court order. It is further alleged that in the end of the year 2015, its AR again requested the counsel to give him copies of all the papers/documents and the counsel promised to supply them but despite assurance he did not adhere his promise. From the end of the year 2015 till September, 2016 the AR of the appellant/defendant company requested the lawyer several times to give him copies of documents and papers in order to know the factual state of affairs of

the suit. In spite of their several requests and reminder, their counsel did not pay any heed.

4. It is further pleaded that on 20.09.2016, the General Manager of the respondent/plaintiff company Mr. Pillai along with one court official visited them to seize the properties and at that time the AR of the appellant/defendant company was in Jaipur. Immediately thereafter they contacted the counsel, who told him that he would call him back in 10 minutes and thereafter neither he called them nor attended their several telephonic calls. He sent several SMSs/Whatsapp messages dated 01.02.2016, 04.02.2016, 20.09.2016, 23.09.2016, 10.10.2016, 11.10.2016 and 22.10.2016, but of no avail. It is alleged that their new counsel inspected the file of the case on 17.10.2016 and they moved an application under Order XXI Rule 26 of CPC before the Executing Court. They also lodged a complaint against previous counsel Sh. Pradeep Kumar, Advocate to the Bar Council of India on 05.11.2016. They applied for obtaining certified copies of all the documents and order-sheets on 16.11.2016, which were supplied on 23.12.2016.
5. It is submitted by the learned counsel for the appellant/applicant that the counsel of the appellant/company has been negligent in not attending the court proceedings and not informing them about the progress of the case and for the negligence of the lawyer, the appellant company should not be made to suffer and the delay in filing the appeal may be condoned.
6. I have heard the submissions of the learned counsel for the appellant/applicant and perused the record.

7. It was a summary suit under Order XXXVII CPC filed by the respondent/plaintiff on 23.09.2011. The appellant/defendant company filed an application for leave to defend the suit on 24.02.2012. The learned ADJ granted leave to defend on 27.09.2012. The plaintiff/respondent company filed a C.R.P. No. 34/2013 against the order by which leave was granted by the learned ADJ. This revision petition was dismissed by court on 12.02.2015. It is mentioned in the order that the appellant company had changed its address and the notice was served upon the counsel representing the appellant before the learned trial court. However, none appeared on behalf of appellant company.
8. It is relevant to mention that in its supporting affidavit with leave to defend application, the appellant company has given its address as C-4, First Floor, Main Market, Malviya Nagar, New Delhi-110017. In its objection dated 24.10.2016 under Order XXI Rule 26 of CPC filed before the Executing Court, the appellant company has given the address of the AR as D-76, Third Floor, Malviya Nagar, New Delhi but of the company as C-4, First Floor, Main Market, Malviya Nagar, New Delhi-110017. In its objection under Order XXI Rule 99 read with Section 151 of CPC in the execution petition, the appellant had given the address of the AR as K-36A, Green Park Main, New Delhi. It did not mention the address of the appellant company. In this present appeal, the appellant has given its address as D-76, 3rd Floor, Malviya Nagar, New Delhi-110017. In the complaint dated 05.11.2016 lodged on its letter head to the Bar Council of India against Sh. Pradeep Kumar, Advocate, the address of the appellant

company is mentioned as D-76, 3rd Floor, Malviya Nagar, New Delhi-110017.

9. In the complaint addressed to the Bar Council of India dated 05.11.2016 as claimed in the appeal/application, it is nowhere alleged that after impugned judgment and decree dated 31.08.2015 their lawyer Sh. Pradeep Kumar has informed them that the suit of the respondent/plaintiff has been dismissed or they requested him to supply them copies of decree and order. It is alleged in the complaint that they have started contacting the lawyer only when the court officials visited them on 20.09.2016. They have also not alleged that their counsel stopped appearing in the case from 10.11.2014 as alleged in the application. They have also not given the details of the fee paid by them to their lawyer by cheque or cash as alleged in the present application. They have also not mentioned as to what happened to the complaint lodged in the Bar Council of India. The Photostat copies of the messages placed on record bear the date as 1 Feb 2016, 4 Feb 2016, 20 Sep and 10 Oct and on other messages no date is there.
10. In these presents, the allegation of the appellant/defendant company is that their lawyer has stopped appearing after 10.11.2014. It is also alleged that after the impugned judgment and decree dated 31.08.2015, their lawyer told them that the suit of the respondent/plaintiff company has been dismissed and they requested to supply them copies of order and decree. These allegations are not found mentioned in the complaint lodged with the Bar Council of India. If their lawyer stopped appearing from 10.11.2014, the appellant/defendant company should have contacted their lawyer or

engaged some other one in the matter or at least they should have started appearing in person but they did not bother to inquire from their previous counsel as to why he stopped appearing w.e.f. 10.11.2014. If they were informed by their counsel after the decision in the suit and copy of order was not supplied, they should have gone to lawyer personally or to court to obtain copies of orders or should have taken assistance of other lawyer. But they were not serious at all.

11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. The appellant is not a simple or rustic illiterate person but a Private Limited Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be vigilant and pursue his case diligently on all the hearings. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not

turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences.

12. In a case before Division Bench of this court in **Man Singh (deceased) through L.Rs. Vs. Gaon Sabha Jindpur and others, 2012 (4) ILR (Del) 50**, it was contended that the appellants were under the bonafide impression that the matter is being properly looked after by the counsel. It was held that the litigant has to be vigilant and he should contact and take part in the proceedings with due diligence and if negligence on the part of the litigant is established in a particular case, then the courts are not to come to the rescue of such applicants. The Division Bench of this court has also cited a decision of the Apex Court, which reads as under: -

“7. The Apex Court in *Hameed Joharan Vs. Abdul Salam*, (2001) 7 SCC 573 2001 Indlaw SC 21137 made the following observations: -

*“.....It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity – the Latin maxim *vigilantibus et non dormientibus jura subveniunt* (the law assists those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of rights.....”*”

13. In the present case after leave to defend the suit was granted, the written statement dated 05.12.2012 along with affidavit of Mr. Pravesh Mishra, AR was filed on 10.12.2012. The appellant company alleged that their counsel stopped appearing after 10.11.2014 and after

decision of the impugned judgment and decree, they were informed by the learned counsel that the suit has been dismissed and they requested the counsel to supply them the copies of order. Though, it has been alleged that the counsel despite several requests did not supply them the copies of the documents, still the appellant, which is a private limited company having highly educated businessmen running it, should have approached the court and find out the factual position and obtained the certified copies. The appellant company has always been either negligent in its approach or knowingly did not disclose the fact of their knowledge of decretal of the suit to avoid the decree or delay the payment of decretal amount. Even the complaint dated 05.11.2016 sent to the Chairman, Bar Council of India, does not reflect that their counsel stopped appearing w.e.f 10.11.2014 or they were falsely informed about the dismissal of the suit whereas in fact it was decreed. They have also not mentioned in the complaint that they were falsely informed by the counsel and did not supply them copies. In the complaint, it is reflected that they have started contacting the lawyer when the representative of the court visited them on 20.09.2016. Such negligent litigants are bound to suffer.

14. In the facts and circumstances, it appears that either the appellant company is concealing true facts of its knowledge of dismissal of the suit or they have been careless and negligent in pursuing their case in the court of law. Be that as it may, the appellant has failed to make out any justification for condonation of delay.
15. Even if the delay is condoned, I find no merit in the appeal, which I intend to deal hereinafter.

RFA No. 497/2017

1. By this RFA the appellant company has challenged the judgment and decree dated 31.08.2015 passed by the court of learned ADJ, by which suit for recovery of Rs.14,82,213/- filed by the respondent/plaintiff company was decreed with interest @ 12% per annum from the date of legal notice dated 24.05.2011 till realization of the suit amount.
2. The respondent/plaintiff company alleged that the defendant availed its services for installing stalls in Petrotech 2009 exhibition as the plaintiff company is engaged in the business of Architects and Exhibitions. After carrying out the work to the satisfaction of the appellant company, the respondent/plaintiff raised two invoices dated 10.02.2009 (i) for Rs.32,93,977/- in respect of Oil India Booth, and (ii) for Rs.13,88,236/- in respect of DGH Booth at Petrotech 2009. The total amount of the invoices was Rs.46,82,213/-, out of which the appellant company had made them a payment of Rs.31,00,000/-. The appellant company has acknowledged the balance amount payable by them to be Rs.14,82,213/- vide its letter dated 31.03.2010. The respondent/plaintiff company sent a legal notice dated 24.05.2011 to the appellant claiming the balance amount with interest. Despite several requests the appellant did not make and thus the respondent claimed the balance amount of Rs.14,82,213/- with interest @ 12% per annum as per custom in the commercial transactions from the due date till date of actual payment. The suit amount of Rs.17,34,190/- as claimed by the respondent company includes principal amount of Rs.14,82,213/- and Rs.2,51,977/- as interest w.e.f. 01.04.2010 till the filing of the suit.

3. In its written statement, it is, *inter alia*, pleaded by the appellant that the suit has been filed on the basis of the bills dated 10.02.2009 and letter dated 31.03.2010 issued by an unauthorized persons and the bills do not fall within the definition of “Bill of Exchange”. It is also alleged that the appellant/defendant company was not satisfied with the work of the plaintiff company and they have settled the entire amount with the respondent and nothing was due against them.
4. The appellant admitted the contents of Para 4 of the plaint wherein it has been pleaded by the respondent/plaintiff that the appellant have made them a payment of Rs.31,00,000/- and last payment was made by cheque no. 286993 dated 21.08.2009 for Rs.1,00,000/- and the appellant/defendant company has acknowledged the due and balance amount to the tune of Rs.14,82,213/- vide its letter dated 31.03.2010 by mentioning that Rs.32,00,000/- has already been paid. Whereas their record reflects that a sum of Rs.31,00,000/- has only been paid and therefore a sum of Rs.15,82,213/- was outstanding. However, the respondent/plaintiff company has claimed amount as admitted by the appellant/defendant company i.e. Rs.14,82,213/- with interest Rs.2,51,977/- till filing of the suit. Para 4 of the plaint reads under: -

“4. That the defendant had made the payment of Rs.31,00,000/- to the plaintiff till date and the last payment has been made vide cheque no: 286993 dt. 21.8.2009 for Rs.1,00,000/-. The balance payment of Rs.15,82,213/- has been outstanding since then. The defendant has also acknowledged the total amount due and also balance payment of Rs.14,82,213/- vide letter dated 31.3.2010 on the plea that Rs.32,00,000/- has been paid. However the record of the plaintiff shows that the defendant has paid Rs.31,00,000/- only. Thus, Rs.15,82,213/- has been still outstanding from the defendant to the plaintiff.”

5. Corresponding Para 4 of the written statement reads as under: -
“4. That the contents of the para No. 4 of the plaint is admitted but nothing is due against the defendant.”
6. Learned ADJ has framed the following issues on 09.09.2013: -
“1. Whether plaintiff is entitled for a decree for a sum of Rs.17,34,190/- in his favour and against the defendant? OPP
2. Whether plaintiff is entitled for any interest? If so at what rate? OPP
3. Relief.”
7. In order to prove its case, the respondent examined its General Manager Sh.C.M. Pillai as PW-1 and Sh. George A.T. as PW-2. Neither the defendant company appeared before the trial court to cross-examine the witnesses of the plaintiff nor adduced any evidence and the learned trial court decreed the suit of the plaintiff for Rs.14,82,213/- with interest @ 12% per annum from the date of legal notice.
8. It is submitted by the learned counsel for the appellant that suit has been filed on the basis of two invoices Ex.PW-1/3 and Ex.PW-1/4 and the letter dated 31.03.2010 Ex.PW-1/5. Learned counsel does not dispute that services of respondent were taken by them. He does not dispute the invoices raised. But he argued that the letter Ex.PW-1/5 dated 31.03.2010 is a forged documents and has been issued by some unauthorized person. He argued that matter was settled and they paid Rs.31,00,000/- in full and final. But no such document of settlement has been filed either in Trial Court or with the appeal.
9. The respondent/plaintiff has placed on record two Tax Invoices (Ex.PW-1/3 and Ex.PW-1/4) for Rs.32,93,977/- and Rs.13,88,236/- respectively, both dated 10.02.2009 issued to the appellant company,

which reflect that even the payment of VAT of Rs.2,88,642/- and Rs.1,21,647/- and Service Taxes of Rs.1,18,920/- and Rs.50,119/- have been paid. These invoices are not disputed by the appellant. The total amount of invoices comes to Rs.46,82,213/-. The Managing Director of the appellant company Sh. Pravesh Mishra in Para no. 3 of his affidavit filed in support of application for leave to defend, pleaded that they have made full and final payment of Rs.31,00,000/- to the respondent/plaintiff company and nothing has been due. The respondent/plaintiff has been claiming that they have received payment of Rs.31,00,000/- and there was a balance of principal amount of Rs.14,82,231/-. Therefore the burden to prove the payment has been on the appellant. The appellant has not filed even a single document to show the balance payment of Rs.14,82,213/-.

10. The respondent/plaintiff company has claimed Rs.14,82,213/- and interest @ 12% per annum from 01.04.2010 till the date of filing of the suit i.e. Rs.2,51,977/- totalling to Rs.17,34,190/-, however the learned trial court has decreed the suit for Rs.14,82,213/- with interest @ 12% per annum from the date of legal notice dated 24.05.2011 till realization of the suit amount with costs. In fact, on filing the suit, the suit amount of Rs.17,34,190/- becomes the principal amount and interest @ 12% per annum would be payable on it. Decretal of suit for Rs.14,82,213/- with interest from the date of legal notice is in fact benefited the appellant.
11. In view of above discussion hereinbefore, I do not find any infirmity in the impugned judgment and decree of the learned trial court. As such the appeal is dismissed with no order as to cost.

CM No. 18653/2017 (for stay)

In view of the dismissal of the appeal, this application under Order 41 Rule 5 read with section 151 CPC, for stay of the impugned judgment and decree, is also dismissed.

VINOD GOEL, J.

MAY 18, 2017

“sk”

