
(2017) 09 DEL CK 0220

In the Delhi High Court

Case No : Civil Suit (COMM) No. 603 Of 2016

Lakshmi Narsimha Finbiz Ltd

APPELLANT

Vs

Gopal Sapra & Ors

RESPONDENT

Date of Decision : 21-09-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 37 Rule 3(5), Order 37 Rule 3(6)

Citation : (2017) 09 DEL CK 0220

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Saurabh Duggal, Sukreet Khandelwal, Gurdeep Singh Bhatia

Judgement

Manmohan, J

I.As. 12850-12851/2015 in CS(COMM) 603/2016

Present applications are procedural applications for entering appearance on behalf of the defendants. The same are allowed.

I.As. 1755-1756/2017 in CS(COMM) 603/2016

1. I.A. 1756/2017 has been filed on behalf of defendants under Order 37 Rule 3(5) CPC for condonation of 418 days in re-filing the leave to defend application.

2. In the application, it has been averred that the defendants were served with the prescribed summons under Order 37 CPC on 05th and 07th

November, 2015. The leave to defend was filed on 16th November, 2015 and subsequently re-filed on 04th December, 2015.

3. However, as there were still certain objections, the leave to defend application was collected by Mr. Pawan Kumar, the clerk of the counsel for defendants in the third week of December, 2015.

4. It is averred in the application that Mr. Pawan Kumar the clerk of the defendants's counsel met with an accident in the month of December, 2015 and could not attend the Court till August, 2016.
5. It is also averred that Mr. Pawan Kumar sent the file to another clerk Mr. Mohd. Yasin in the month of August, 2016.
6. However, it is averred that Mr. Mohd. Yasin could not re-file the leave to defend application as he fell ill on account of Tuberculosis and subsequently upon his wife expiring on December, 2016, he resigned as a clerk.
7. It is further averred in the application that the counsel for defendants was under the impression that the leave to defend was lying in the judicial file and it was only on 21st December, 2016 when the Court informed the counsel for defendants that the leave to defend was not traceable, that the counsel became aware that the leave to defend had not been filed by his clerk.
8. Mr. Gurdeep Singh Bhatia, learned counsel for defendants states that the delay in re-filing the leave to defend application was on account of the circumstances beyond the control of the defendants and they should not suffer on account of any mistake or negligence on the part of their counsel.
9. Per contra, learned counsel for plaintiff states that no documents have been annexed in support of any of the alibis offered in the present application. He states that the applications are normally put in defect only when there are serious shortcomings and if the defendants have not removed the said defects within the stipulated period, then this Court should not condone the delay.
10. Having heard learned counsel for parties, this Court finds that no documents or affidavits have been filed in support of the earlier clerk's accident as well as the illness of the subsequent clerk and the death of his wife.
11. The present application is not even supported by an affidavit of counsel for the defendants.
12. The facts as disclosed in the application show sheer negligence on the part of the defendants and their counsel in pursuing/prosecuting the present case.
13. It is only on account of the conduct of the defendants that the summary procedure prescribed under Order 37 CPC is standing on its head in the present case.

14. Consequently, present application is dismissed.

CS(COMM) 603/2016

Since the leave to defend has not been filed within the stipulated period, I.A. 1755/2017 being the leave to defend application is dismissed and the

present suit is decreed in accordance with the Order 37 Rule 3(6) CPC. Registry is directed to prepare a decree sheet accordingly.