

**(2019) 02 DEL CK 0295**  
**In the Delhi High Court**  
**Case No : Civil Suits (OS) 2854 Of 2015**

M/S Kuantum Papers Ltd

APPELLANT

Vs

M/S Shree Swastic Sales Corporation Pvt Ltd & Ors

RESPONDENT

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**Date of Decision :** 14-02-2019

**Acts Referred:**

Code Of Civil Procedure, 1908 — Section 151, Order 37 Rule (3)(6)(a), Order 37 Rule 4  
Limitation Act, 1963 — Section 5

**Citation :** (2019) 02 DEL CK 0295

**Hon'ble Judges :** Manmohan, J

**Bench :** Single Bench

**Advocate :** Aman Shankar, Sanjay Khosla, Raman Kapur, Anand M. Mishra

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## Judgement

Manmohan, J

I.As. 3483/2018, 4354/2018

1. Present applications have been filed on behalf of the defendant no.2 under Order XXXVII Rule 4 read with Section 151 of CPC for setting aside the order dated 27th February, 2017 (dismissing the leave to defend application filed by the defendants) as well as the decree dated 10th July, 2017 and under Section 5 of the Limitation Act seeking condonation of delay of 575 and 715 days respectively, in filing the aforesaid applications.

2. It is averred in the applications that the counsel/law firm who/which was engaged to appear for defendant no.2 stopped pursuing the matter and did not inform the defendant no.2 of the developments in the case. It is averred that the defendant no.2 was under the bonafide impression that suit was being pursued by the counsel/law firm diligently.

3. It is stated that the defendant no.2 became aware of the decree being passed in the suit on 03rd December, 2018, when he received notices from the High Court in the Execution Petition filed on behalf of the plaintiff.

4. It is further stated in the applications that since January, 2016 the defendant no.2 had no longer been residing at the Alipur Road address and had shifted to Shakti Nagar in a tenanted premises and no notices or summons were ever received by defendant no.2 at the new address.

5. Learned senior counsel for defendant no.2 contends that the defendant no.2, through defendant no.1, had entered into a Memorandum of Understanding (MoU) dated 17th December, 2015, during the pendency of the suit, with the present plaintiff and in terms of the said MoU, the plaintiff had agreed to accept the reduced amount of Rs.6,89,45,997/- instead of Rs.9,25,92,523/-.

6. However, he states, that M/s Princess Choice Hotel Private Limited to whom the defendants had sold their shares in M/s. Swift Boutique Hotels Pvt. Ltd., a company which owned a Hotel in Goa, by entering into the Memorandum of Understanding dated 05th July, 2016 with the plaintiff, had unilaterally increased the debt amount to Rs.9,25,92,523/- without any authorisation from the plaintiff.

7. Learned senior counsel further states that the demand drafts of Rs.3,15,00,000/- were handed over to the plaintiff by M/s. Princess Choice Hotel Private Limited out of the funds and bank accounts of defendant no.1, without express authorisation of the defendant no.1.

8. Learned senior counsel for defendant no.2 contends that the defendant nos.2 and 3 have outstanding claims against M/s. Princess Choice Hotel Private Limited which could be utilized to pay the outstanding amount to the plaintiff.

9. Per contra, the learned counsel for the plaintiff states that the present applications have been filed belatedly with malafide intent as the bank accounts of defendant no.2 had been attached by this Court in Execution Petition No.103/2017, vide order dated 14th December, 2017 and an amount of Rs. 1,00,00,000/- (1 crore), lying in the said bank account stands attached.

10. It is pertinent to mention that the present applications have been filed at a belated stage i.e., almost two years after the leave to defend application filed by defendant nos.1 to 3 had been dismissed in default and on account of non-prosecution, vide order dated 27th February, 2017. In fact, the counsel for the applicants/defendant nos.1 to 3 had not appeared for applicants/defendant nos.1 to 3 on 19th December, 2016, 21st December, 2016, 19th January, 2017, 25th January, 2017, 17th February, 2017, 23rd February, 2017 and 27th February, 2017, i.e. prior to dismissal of leave to defend application.

11. The mandate of law as contained in Order XXXVII Rule (3)(6)(a) of the Civil Procedure Code, 1908, clearly stipulates that, once the leave to defend application is refused by a Court, then the plaintiff shall be entitled to judgment forthwith. Consequently, the present summary suit had been rightly decreed by this Court for Rs.2,95,92,523/-.

12. In response to a pointed query raised by this Court, learned senior counsel appearing for defendant no.2 admits that the defendant no.2 has not issued any

notice to the concerned counsel/law firm and has not initiated any disciplinary proceeding or filed any complaint against the said counsel/law firm. Additionally, the learned senior counsel has not provided a satisfactory explanation as to why the defendant no.2 stopped observing the matter and did not exchange any correspondence with the counsel/law firm.

13. The present applications have been filed after a delay of 575 and 715 days respectively, which is indicative of the lackadaisical attitude adopted by the applicants/defendant nos.1 to 3 in pursuing the present suit and the same does not inspire any confidence.

14. This Court is further of the view that the applicants/defendant nos. 1 to 3 cannot rely upon the MoU dated 17th December, 2015, entered into between the plaintiff and the defendant no.1 as the defendant no.1 did not make the payments of Rs.3,00,00,000/- by 30th December, 2015 as well as the balance amount within six months as stipulated in the said MoU.

15. Additionally, not only did the defendant nos.1 to 3 fail to fulfil their obligations under the Memorandum of Understanding, but to create further hindrances they sold their shareholding in M/s. Swift Boutique Hostels Pvt. Ltd. to M/s Princess Choice Hotel Private Limited, a third party.

16. Moreover, this Court, in a Summary Suit for recovery filed by the plaintiff against the defendants, cannot examine or adjudicate upon any claims the defendants may have against any third party i.e., M/s Princess Choice Hotel Private Limited. The defendant no.2 has to separately pursue his remedy against the third party and cannot challenge the decree at such a belated stage on the basis of a transaction entered between the plaintiff and the third party in 2016.

17. To conclude, this Court is of the view that the applicants/defendants first entered into a Memorandum of Understanding with the plaintiffs under which they took concessions, including waiver of interest from the plaintiff, but the defendants did not honour their commitment under the said Memorandum of Understanding.

18. Thereafter, the defendant nos.2 and 3 sold their shareholding in M/s Swift Boutique Hostels Pvt. Ltd. which had been attached by this court, and thought that the stake of the third party would be so high in the deal that it would settle the dispute fully with the plaintiff.

19. To create further complications, the defendants stopped appearing in the present suit and admittedly, even after the change of address, did not intimate the new address to this Court.

20. The allegation by the defendant no.2 against the previous counsel does not inspire any confidence as no proof of notice or correspondence or payment of any fee bill to the previous counsel has been enclosed with the present applications.

21. This Court is of the opinion that the defendant no.2 has failed to discharge his duty of care as well as the obligation that a litigant owes to this Court.

22. This Court also finds merits in the contentions of the learned counsel for the plaintiff that the present applications, for setting aside the order and decree, have been filed only after the defendant no.2's bank account having substantial sums of monies had been attached.

23. As the present applications have been filed with mala fide intent, to obstruct the recovery of money under a legal and valid decree, the present applications are dismissed with costs of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) to be deposited with AIIMS Poor Fund Account No.10874588424 with SBI, Ansari Nagar, New Delhi (IFSC Code:SBIN0001536) within three weeks.