

(2006) 03 DEL CK 0197

In the Delhi High Court

Case No : Civil Miscellaneous Main 678 of 2004 and Civil Miscellaneous Application 6630 of 2004

Wimpy International Ltd.

APPELLANT

Vs

Tarai Foods Ltd.

RESPONDENT

Date of Decision : 08-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7

Citation : (2006) 128 DLT 342 : (2006) 143 PLR 43

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Girdhar Govind and Noorun Nahar Firdausi, for the Appellant; R.S. Endlaw, for the Respondent

Final Decision : Disposed Off

Judgement

R.S. Sodhi, J.—CM(M) 678/2004 seeks to challenge the order dated 19.01.2004 of the Additional District Judge in Suit No. 46/03/00 whereby the learned Judge while adjudicating on the application of the petitioner under Order 9 rule 7 CPC has dismissed the same on the ground that written statement has not been filed for a considerable length of time and that time and again proceedings have been adjourned to enable the petitioner to file his written statement. The petitioner having taken undue advantage of a protracted trial cannot be shown any leniency.

2. Counsel for the petitioner submits that the written statement in the present case, was filed on 12.03.2003 vide dairy No. 8496 in the High Court which was verified by this court on 19.05.2005. Merely because the written statement filed in the High Court has not found its way to the record of the case, is no fault of the petitioner and he cannot be penalized for the same. Counsel also submits that the amount sought to be recovered has already been deposited with the Company Court and, Therefore, the amount is secured and no prejudice would be caused to the respondent.

3. Counsel for the respondent contends that the filing of the written statement was subject to payment of costs which costs have not been deposited. Counsel for the petitioner, Mr. Girdhar Govind submits that the costs have been paid.

4. Heard counsel for the parties and have gone through the record of the case. From the order of this court dated 19.05.2004 it is apparent that the written statement has been filed by the petitioner on 12.03.2003, which fact has been verified. Of course, there is no Explanation as to why thereafter the matter should be continued to be adjourned for filing of written statement when all that the petitioner had to do was to furnish a copy thereof to the other side. However, the fact of the matter is that the written statement was filed on 13.03.2004 and, Therefore, any adverse order made after filing of written statement should not have been taken into consideration.

5. However, since the matter has continued to be adjourned from time to time, although this fact could have been brought to the notice of the court, obviously, this has lead to protracted proceedings. Therefore, the orders dated 19.01.2004 and 15.03.2004 are not justified and are set aside subject to the petitioner paying a cost of Rs. 4,000/- (rupees four thousand) to the respondent. Copy of the written statement to be supplied to counsel for the respondent on/before the date fixed before the trial court and the trial court to proceed with the matter in accordance with law.

6. Since the case is an old case, the trial court is advised to expedite hearing of the matter.

7. CM(M) 678/2004 and CM. APPL.6630/2004 are disposed of.