

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jun-18-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET GA NO.3496 OF 2010 AID NO.5 OF 2010 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF : M/S.AVANTI OVERSEAS PVT.LTD.AND M/S.ARJAN IMPEX PVT.LTD.& ANR.

BEFORE: The Hon'ble JUSTICE PATHERYA Date : 18th June, 2014.

MR.SAYANTAN BASU, MR.SAYAN ROY CHOWDHURY, ADVOCATES FOR PETITIONER MR.RANJAN BACHAWAT,SR.ADVOCATE, MR.RUDRAMAN BHATTACHARYYA, MR.TANMOY ROY, MS.M.DASGUPTA, MS.S.CHATTERJEE, ADVOCATES FOR RESPONDENTS The Court : By this application filed under section 5 of the Limitation Act the applicant herein seeks to condone the delay of 34 days in filing of this application.

On 20th September, 2010, AID No.5 of 2010 was dismissed for non-appearance at the second call.

In this application an explanation has been given for such non-appearance, namely, that the advocate-on-record of the applicant was suffering ill health since mid September 2010, therefore, she could not attend to the matter when the same was called on.

Thereafter when an enquiry was made it came to light that the said appeal had been dismissed on the fated day.

Subsequently an application was made.

The court closed for the long vacation.

The only stumbling block for grant of relief to the applicant was the explanation sought to be given in paragraph 10 of the application, namely, that the applicant could not contact the signing authority of the applicant.

It was in view of such averment that the order dated 3rd December, 2010 was passed which was challenged before the Supreme Court.

The said order was set aside for the reason set out in the order dated 5th November, 2012.

The High Court was, however, directed to consider the application filed under section 5 of the Limitation Act afresh along with the application for recall on merits in accordance with law.

This day an explanation is sought to be given with regard to the following: the applicant herein could not be able to contact with the signing authority of the applicant which was the basis of the order dated 3rd December, 2010.

The explanation is that in patent and trade mark matters the trade mark attorneys require not only the signature of the constituted attorney of the applicant but also need the papers to be signed by the advocate of the applicant.

It is because of this instruction given in all trade mark matters that this sentence has crept in paragraph 10 of the application, as the applicant in the appeal so also in this application whereby restoration of the appeal is sought considered it

necessary to not only get the papers signed by the constituted attorney but also by the advocate.

Admittedly the puja vacation in 2010 was from 7th October, 2010 to 7th November, 2010 during which time the advocate of the applicant was not available.

To appoint an advocate is the prerogative of a litigant and he may have faith in one and not in the other and it appears that the applicant did not feel it necessary to change its advocate.

On the day of dismissal the advocate had taken ill.

This does not amount to negligence, as it may have been a case of genuine ill health.

Therefore, for non-appearance of the advocate, the litigant ought not to suffer.

For non-availability of the advocate, the litigant also ought not to suffer and in view of the explanation given by the applicants counsel for insertion of this sentence in paragraph 10, delay is condoned.

In view of the aforesaid, this application is disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon completion of all requisite formalities.

(PATHERYA, J.) sb/

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