

Satish Bansal vs.enershell Alloys & Steel Ltd Thr Its Managing Director Gaurav

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Court : Delhi

Decided On : Dec-01-2016

Appellant : Satish Bansal

Respondent : Enershell Alloys & Steel Ltd Thr Its Managing Director Gaurav

Judgement :

\$~3. * IN THE HIGH COURT OF DELHI AT NEW DELHI + RFA8302016 and CM APPL. 39259/2016 1. SATISH BANSAL Appellant Through: Mr. Sandeep Sharma, Advocate with Mr. Bhrigu Dhami, Advocate versus ENERSHELL ALLOYS & STEEL LTD THR ITS MANAGING DIRECTOR GAURAV Through: None Respondent CORAM: HON'BLE MS. JUSTICE HIMA KOHLI % The appellant/plaintiff is aggrieved by the order dated 23.03.2016

ORDER

0112.2016 passed by the trial court, dismissing his suit for recovery of money, for non- prosecution.

2. On 24.10.2016, counsel for the appellant was directed to file an affidavit alongwith the relevant documents to demonstrate the manner in which compliances of the order dated 17.12.2015 passed by the trial court were made for effecting service on the respondent/defendant by registered post, courier and dasti.

3. Pursuant to the aforesaid order, an affidavit dated 07.11.2016 has been filed by the appellant, wherein it is stated that on 21.09.2015, the trial court had issued summons to the respondent/defendant by ordinary process, registered cover, courier and dasti. In compliance with the said order, Page 1 of 3 RFA8302016 process fee and registered covers were filed. A reference has been made to the report received from the process server as also the summons sent by registered post, but there is no averment with regard to the steps taken by the appellant/plaintiff to effect service on the respondent/defendant by courier and dasti. It has been further stated in the affidavit that when the suit was listed before the trial court on 17.12.2015, the learned ADJ had directed the appellant/plaintiff to file fresh address of the respondent/defendant and the case was adjourned to 23.03.2016, on which date, the suit came to be dismissed for non-prosecution as the fresh address was not filed.

4. The explanation sought to be offered for non-filing of the fresh address is that the respondent/defendant was continuing to conduct its business from the same address as was given in the memo of parties. If that was the case, then there was no justification for learned counsel for the appellant/plaintiff to have made a submission before the trial court on 17.12.2015 that he needed time to furnish the fresh address of the respondent/defendant, which permission was duly granted and fresh service was directed to be effected on the respondent/defendant on filing process fee again, by registered cover, courier and dasti, returnable for 23.03.2016.

5. In the above facts and circumstances, this Court does not find any illegality in the impugned order dated 23.03.2016, whereunder the trial court dismissed the suit instituted by the appellant/plaintiff for non-prosecution.

6. At this stage, Mr. Sharma, learned counsel for the appellant concedes that there was an error on the part of his colleague, who was pursuing the case in the trial court, due to which the process fee was not filed for effecting service on the respondent/defendant, returnable on 23.03.2016. RFA8302016 Page 2 of 3 7. The aforesaid candid admission made by learned counsel for the appellant does not find any mention in the several grounds taken in the appeal to assail the impugned

order. Instead, on a perusal of the grounds taken in the appeal, it is apparent that the appellant has dumped the entire blame at the doors of the trial court. However, as counsel for the appellant tenders an apology for the lackadaisical manner in which the suit has been prosecuted before the trial court, this Court does not propose to take the issue any further.

8. Subject to payment of costs of Rs.10,000/- to be deposited with the Delhi High Court Library Fund within two weeks from today, the present appeal is allowed. The impugned order dated 23.03.2016 is set aside and the suit which was at the stage of service, is remanded back to the trial court for further proceedings.

9. The appellant shall appear before the trial court on 11.01.2017. It is made clear that only one opportunity shall be granted to the appellant/plaintiff to file the process fee for effecting service on the respondent/defendant by all available modes at the address given in the memo of parties. If the appellant fails to file the process fee on time or the same remains under objections, or if effective steps are not taken to serve the respondent/defendant, then the trial court shall be at liberty to pass appropriate orders.

10. The appeal is disposed of alongwith the pending application. HIMA KOHLI, J
DECEMBER01 2016 rkb Page 3 of 3 RFA8302016

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