

Edgecliffe Developers Llp vs.m/s Neelamber Associates Private Limited

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SooperKanoon Citation : sooperkanoon.com/1208511

Court : Delhi

Decided On : Sep-01-2017

Appellant : Edgecliffe Developers Llp

Respondent : M/S Neelamber Associates Private Limited

Advocate for Pet/Ap. : Ms. Padma Priya, Ms. Gurkamal Hora Arora

Judgement :

17 \$~ * + % IN THE HIGH COURT OF DELHI AT NEW DELHI CS(OS) 2858/2015
EDGECLIFFE DEVELOPERS LLP Through: Ms. Padma Priya, Advocate.
Plaintiff versus M/S NEELAMBER ASSOCIATES PRIVATE LIMITED
Defendant Through: Ms. Gurkamal Hora Arora, Advocate for applicant-defendant.
Date of Decision:

01. t September, 2017 CORAM: HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J (Oral): I.As. 9961-9963/2017 1. Present application being I.A. 9961/2017 has been filed by the applicant-defendant under Order XXXVII Rule 4 read with Order IX Rule 13 and Section 151 CPC for setting aside judgment and decree dated 24th February, 2016 and 02nd June, 2016.

2. Learned counsel for applicant-defendant states that the entire transaction of subscription of equity shares and issuing of cheques by plaintiff was a sham transaction carried out by Mr. D.K. Gupta, one of the present Directors of the

defendant, in collusion and in connivance with CS(OS) 2858/2015 Page 1 of 3 partners of plaintiff.

3. It is contended that the plaintiff and Mr. D.K. Gupta taking advantage of the position of Mr. D.K. Gupta as the Director and being in effective and complete control and management of the defendant company, colluded with each other and played a fraud upon the defendant company and its shareholders to usurp the properties of the defendant company under the garb of the said judgment and decree passed by this Court. She states that the said modus operandi has been adopted by the plaintiff and Mr. D.K. Gupta in a number of cases.

4. The present application is accompanied by an application being I.A.9963/2017 seeking condonation of delay of 524 days.

5. This Court is of the opinion that as no appearance was entered by the defendant within a period of ten days of summons being served, this Court had no other option under Order XXXVII Rule 2(3) CPC to decree the suit. After all, once a company has been served, it cannot argue that each and every Director of the company or its shareholder should be separately served. Internal management or mismanagement as it were to be appropriately called cannot be a ground to revoke a decree under Order 37 Rule 4 CPC.

6. Further, in response to a pointed question by this Court, learned counsel for applicant-defendant admitted that neither any criminal nor any civil proceeding or any case under the Companies Act had been filed by the defendant company against Mr. D.K. Gupta till date.

7. In the opinion of this Court, if Mr. D.K. Gupta has played a fraud upon the defendant company and its shareholders, the defendant is not remediless. It must file appropriate proceedings against its Director Mr. CS(OS) 2858/2015 Page 2 of 3 D.K. Gupta. Since that has not been done till date and Mr. D.K. Gupta continues to be the Director, the version/story put up by the applicant- defendant inspires no confidence. Consequently, the present applications are dismissed both on merits as well as on the ground of delay. MANMOHAN, J SEPTEMBER01 2017 js CS(OS) 2858/2015 Page 3 of 3

