

Vimka Impex (P) Ltd. Vs. State Bank of Saurashtra and anr.

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Court : DRAT Delhi

Decided On : Oct-03-2003

Reported in : IV(2004)BC70

Judge : K Kumaran

Appellant : Vimka Impex (P) Ltd.

Respondent : State Bank of Saurashtra and anr.

Judgement :

1. The applicant/appellant has filed this appeal, which is yet to be registered, against the order dated 16.1.2003 by which it was ordered that if the appellant does not file the written statement by 23.1.2003 and also pay cost, the right to file the written statement will stand closed and the consequential Order dated 31.7.2003. Apparently, the appellant/defendant did not file the written statement within the stipulated time. The learned Counsel for the appellant points out several orders passed between 16.1.2003 and 31.7.2003 to show that there was not only a talk of compromise but a compromise had, in fact, been arrived at between the appellant and the Bank by which the appellant had agreed to pay the amount due to the Bank in quarterly instalments of Rs. 3 lakhs each commencing from 23.1.2003. Subsequent instalments were to be paid on 23.4.2003, 23.7.2003 and 23.10.2003, The learned Counsel for the appellant contends that the bona fides of the appellant are amply clear from the fact that the 1st instalment due was paid on 23.1.2003. According to him, the appellant could not pay the instalments that were to be paid on 23.4.2003 and 23.7.2003 in view of financial difficulties of

the appellant. Whatever be the reason, it is evident that on the one hand the appellant, having entered into a compromise, did not honour the terms of the compromise, and on the other hand, did not file the written statement despite specific order dated 16.1.2003 that the right of the appellant to file the written statement will stand closed if the written statement is not filed within the stipulated period and cost of Rs. 5000/- is not paid. The learned Counsel for the appellant concedes that the sum of Rs. 5000/- as cost has also not been paid. Therefore, it is clear that the intention of the appellant is not bona fide. In these circumstances, I am of the view that the learned Presiding Officer of the DRT was right in holding that the right to file the written statement stood closed.

This is on merits of the claim of the appellant/ applicant.

2. This apart, we find that the appellant wants to challenge the order dated 16.1.2003, by this appeal, which was presented on 25.8.2003, i.e.

after a period of seven months. In the circumstances pointed out above, I am of the view that the conduct of the appellant has not been bona fide, and there is no reason for excusing the delay also. Accordingly, the application for condonation of delay is dismissed.

3. In view of what I have pointed out above, on merits also, the unregistered appeal is rejected.

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