

L.P. Electronics Pvt. Ltd. Vs. Manor Floatel Ltd.

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Court : Kolkata

Decided On : Mar-13-2003

Reported in : (2003)3CALLT242(HC)

Judge : Asit Kumar Bisi, J.

Acts : [Limitation Act, 1963](#) - Section 5; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 9, Rule 13

Appeal No. : G.A. No. 2965 of 2001 and C.S. No. 178 of 1995

Appellant : L.P. Electronics Pvt. Ltd.

Respondent : Manor Floatel Ltd.

Advocate for Def. : G.P. Trivedi and ;Anand Bhandari, Adv.

Advocate for Pet/Ap. : P.K. Dutta and ;C.K. Dutta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Asit Kumar Bisi, J.

1. By the application being G.A. No. 2965 of 2001 the petitioner Manor Floatel Ltd. being defendant in C.S. No. 178 of 1995 has prayed for condonation of delay in

making the application for setting aside the ex parte decree dated 22nd November, 1998 passed in C.S. No. 178 of 1995 and setting aside the order dated 17th February, 2001 passed in execution proceeding arising out of the ex parte decree dated 22nd December 1998.

The case of the petitioner is brief is that on 19th May 1995 the plaintiff L.P. Electronics Pvt. Ltd. filed the said suit, inter alia, praying for the following relief:

(a) A decree for complete possession of the licensed premises fully described in annexure 'A' to the plaint together with all equipments and fixtures mentioned therein;

(b) A decree for Rs. 11,97,000/-;

(c) (i) Alternatively a decree for Rs. 10,17,000/-;

(ii) An enquiry into mesne profits/damages and a decree for such sum as may there upon be found due to the plaintiff;

(d) Interim interest and interest on judgment;

(e) Attachment

(f) Receiver;

(g) Injunction;

(h) Costs;

(i) Further and/or other relief.

3. Prior to filing of the said suit by the plaintiff the present petitioner filed a suit being suit No. 272 of 1993 seeking inter alia a decree for specific performance of the agreement dated 12th February, 1993. The subject matters of both the suits are related to Flat No. 2A. Poonam Building, 5/2 Russell Street, Calcutta - 700 071. The petitioner had undertaken a project of setting up a floating hotel on the river Hooghly. The petitioner came to learn that the plaintiff was intending to furnish and let out a complete air conditioned office with all its facilities. The

plaintiff represented to the petitioner that it was in possession of Flat No. 2A on the Second floor of Poonam Building and was willing to let out the same as a fully air conditioned office with all its facilities. Pursuant to the discussions between the plaintiff and the petitioner an agreement in writing was entered into by and between the plaintiff and the defendant petitioner on 12th February, 1993. In terms of the said indenture dated 12th February, 1993 the petitioner duly deposited a sum of Rs. 2 lacs with the plaintiff. On or about 1st May, 1993 the plaintiff made over peaceful and exclusive possession of the said office space to the petitioner. After having taken possession of the said office space, the petitioner discovered that the total area of the office space was about 775 sq ft, which was contrary to the specific provision in the said indenture that the plaintiff would offer office space measuring 1,000 sq. ft. Consequently by a letter dated 9th June, 1993 the advocate of the petitioner raised specific objection to the measurement of the office space and called upon the plaintiff to provide telex facility. Subsequently the petitioner was constrained to file suit No. 272 of 1993 and prior to that the petitioner paid the sum of Rs, 2,62,000/- to the plaintiff. Even then the plaintiff failed to provide any of the facilities and space as mentioned in the agreement. Subsequently, the petitioner paid a sum of Rs. 75,000/- to the plaintiff in terms of the order of the Court in Suit No. 272 of 1993.

4. Further case of the petitioner is that the petitioner engaged Mr. Anirudha Dasgupta in the suit No. 272 of 1993. The petitioner came to know subsequently that the said advocate did not take any step to the said writ summons of the said suit upon the defendant of the said suit as a result of which the said suit instituted by the petitioner was dismissed. In the meantime the present plaintiff instituted the instant suit and made an application, inter alia, praying for judgment upon admission for the sum of Rs. 15,03,000/- or alternatively Rs. 11,34,000/-. The said purported claim was no account of alleged arrears of licence fees. The present petitioner filed an affidavit-in-opposition to the said application of the plaintiff for judgment upon admission disputing the said claim. On 22nd December 1998 the aforesaid application for judgment upon admission was taken up in absence of the petitioner's learned advocate and a decree for Rs. 11,34,000/- was passed together with interest thereon by Sujit Kumar Sinha, J. (as His Lordship then was). It has been alleged by the defendant petitioner that the learned advocate for the

plaintiff drew the attention of neither the learned Judge about the defense taken in the affidavit-in-opposition filed by the petitioner nor the learned Judge considered the same. The petitioner's then advocate did not appear although the petitioner took all reasonable steps for the same. The petitioner had no knowledge about the said ex parte decree until the petitioner came across a publication dated 5th May, 2000 made in the newspaper at the instance of the receiver who was appointed by this Court by an order dated 17th February, 2000 passed in an execution application filed by the plaintiff from the said ex parte decree dated 22-12-98. The petitioner for the first time came to know through the said publication about the order passed by this Court for sale of the said hull of Manor Floatel Ltd. by public auction, for which the receiver invited tenders pursuant to the said advertisement dated 5th May, 2000. Immediately thereafter the petitioner filed an application being G.A. No. 1088 of 2000, inter alia, praying for stay of execution of the decree dated 22nd December, 1998 and also mentioned about the suit filed by the petitioner prior to the institution of the plaintiff's suit. During pendency of the said application for stay of execution of the decree the petitioner came to know about the dismissal of the petitioner's suit being suit No. 272 of 1993 for non service of writ of summons. Thereafter the petitioner contacted the said erstwhile advocate on record and took charge from him in favour of the petitioner's present advocate. On 18th May, 2000 the petitioner filed another suit being No. 197 of 2000 in this Court against the present plaintiff for self-same bona fide and continuing cause of action for which the earlier suit being suit No. 272 of 1993 was filed.

5. The petitioner filed an application being G.A. No. 1088 of 2000 and this Court directed the petitioner to furnish security to the extent of Rs. 12 lacs with the Registrar, Original Side of this Court. The appeal preferred against the said order was dismissed and this Court extended the time to furnish the security.

6. It has been specifically alleged by the petitioner that after the petitioner came to know about passing of the said ex parte decree from the aforesaid advertisement dated 5th May, 2000 published in the newspaper the petitioner became very much anxious and enquired from the petitioner's erstwhile advocate, Mr. Aniruddha Dasgupta. The petitioner did not get any response from the said advocate Mr. Dasgupta as to why no steps had been taken by him either in the petitioner's suit

being No. 272 of 1993 or in the application of the plaintiff for judgment upon admission. A serious resentment had taken place between the petitioner and the said advocate and ultimately the petitioner took change from the said Mr. A Dasgupta, advocate, to the petitioner's present advocate. After taking such change and handing over papers, some discussions had taken place with the petitioner's present Advocate-on-Record and the petitioner was then advised to take step immediately to resist the execution of the decree in accordance with law. During the said period the petitioner was not advised to file another application or initiated any proceeding as against the ex parte decree dated 22nd December 1998, The petitioner furnished security on 12th March, 2001 and thereafter on or about 23rd May, 2001 the petitioner's application for appointment of Special Officer and other reliefs was heard by Bhaskar Bhattacharjee, J. After furnishing such security and hearing of the application the petitioner enquired from the petitioner's advocate as to whether any further step was required to be taken against the said ex parte decree although the petitioner's application for stay of execution of the decree was pending. In conference held with the petitioner's advocate on 18th June, 2001 the petitioner was advised to file an application for setting aside the ex parte decree dated 22nd December, 1998. The petitioner completely relied upon the erstwhile Advocate-on-Record Mr. A. Dasgupta. The petitioner had taken all necessary steps whenever the petitioner was asked to do so and there were no laches or negligence or inaction on its part. From the date of knowledge the petitioner had taken all necessary steps expeditiously in terms of the advice given by the petitioner's advocate and there was no delay and/or negligence or inaction on its part. There was no delay on the part of the petitioner to challenge the said ex-parte decree dated 22nd December 1998. In the supplementary affidavit filed by the petitioner it has been further alleged that the erstwhile advocate-on-record Mr. A. Dasgupta by the letter dated 22nd August, 2000 confirmed the fact that due to his family problems during the relevant period he could not keep track the development of the matter pending in this Court.

7. The plaintiff decree-holder has resisted the petitioner's prayer for setting aside the ex parte decree dated 22nd December 1998 by filing the affidavit-in-opposition wherein the material allegations made by the petitioner in the application have been denied. It has been alleged, inter alia, by the plaintiff decree-holder that on

22nd December, 1998 a decree for Rs. 11,34,000/- with interest was passed against the defendant and on obtaining the said decree the plaintiff filed an application for execution of the decree before the Court whereupon Kalyan Jyoti Sengupta, J, passed an order on 27.7.99 and thereafter on 17.2.2000 directing the Receiver to sell the hull of the Manor Floatel. Pursuant to the said order the plaintiff-decree-holder had taken necessary steps to make publication in the newspaper for the purpose of sale of the said hull of the judgment-debtor and completed all the required formalities. On 31.8.2000 the judgment-debtor moved an application for stay of operation of execution of the said order dated 22nd December 1998 whereupon Pinaki Chandra Ghose, J. passed an order of stay of the sale of the premises in question upon furnishing security to the tune of Rs. 12 lacs by way of banker's cheque to be paid by the petitioner with the Registrar, Original Side of this Court. With a view to delay the proceeding in execution case the judgment-debtor preferred an appeal before the Hon'ble Division Bench disposed of the appeal granting extension of time to furnish security to the tune of Rs. 12 lacs by a banker's cheque for a further period of two months from the date of the order. By an order dated 12.2.2001 the Hon'ble Division Bench granted extension of time for furnishing the security as last chance for a period of one month from 12.2.01. The petitioner judgment-debtor furnished the security on 20/21/3-2001. It has been further alleged by the plaintiff decree-holder that the application being G.A. No. 2965 of 2001 filed by the petitioner-judgment debtor suffers from the defect of travesty of truth and suppression of material facts. The said application of the petitioner judgment-debtor is not sustainable either in law and in facts and the same is hopelessly barred by limitation.

8. In the subsequent affidavit-in-opposition to the supplementary affidavit the plaintiff decree-holder has further alleged that Mr. Aniruddha Dasgupta, Solicitor and advocate acting for the defendant company was also director of the defendant company at all material time and the defendant company and its director had full knowledge about the proceeding. It would appear from the report of the Receiver that the Receiver personally served the notice and the order directing sale of the hull belonging to the defendant company in execution of the decree on admission of 5-8-99 at 5.30pm and the said notice was served by the learned Receiver in the office of the defendant company.

9. In the affidavit-in-reply the defendant petitioner has denied and disputed the material allegations contained in the affidavit-in-opposition filed by the plaintiff-decree-holder.

10. The question to be decided is whether or not there is any justifiable ground for condoning the delay and allowing the application being G.A. No. 2965 of 2001 filed by the petitioner for setting aside the ex parte decree dated 22nd December 1998 passed in C.S. No. 178 of 1995.

11. From the materials on record it appears that on 22-12-98 the application for judgment upon admission was taken up by Sujit Kumar Sinha, J. (as His Lordship then was) who passed the following order copy of which is marked as annexure 'A' to the application filed by the defendant petitioner:

'Despite service the defendant has not appeared. Mr. S. Sarkar appears on behalf of the plaintiff. Mr. Sarkar has placed reliance on the letter of the defendant, particularly paragraph 5 at page 32 of the petition which read thus:

'5. You are aware that the possession of the said office space has been handed over by you to my client with effect from 1st May, 1993. Upon taking possession of the said office space, it was found that the total area of the said office space is about 775 sq ft., much to the contrary to 100 sq ft. as mentioned in the said agreement. Hence licence fee payable by my clients to you should be on pro-rata basis i.e. Rs. 31,000/- per month. Under no circumstances, they are liable and obliged to pay the licence fee on the basis of 1000sq. ft. for the reason stated hereinabove.

It is on the basis of the aforesaid admission that the plaintiff now claims an amount as mentioned in annexure 'H' to the petition.

In that view of the matter, there will be a decree for Rs. 11,34,000/-together with simple interest at the rate of 6% per annum on and from the date and until payment. In so far as the balance claim of the plaintiff is concerned, the same shall be adjudicated upon on trial of the suit. The department is directed to draw up the decree as expeditiously as possible.

Let the notice given by the advocate-on-record of the plaintiff pursuant to the directions of this Court to the defendant and its advocate-on-record be kept on record.'

12. It is quite clear from the aforesaid order that despite service of notice the defendant did not appear before the learned Judge on 22.12.98. It further appears that the notice given by the learned advocate-on-record of the plaintiff pursuant to the directions of the Court to the defendant and its advocate-on-record had been kept on the record. Nowhere in the four corners of the application the defendant has assailed the factum of service of notice. It is, however, the specific plea of the defendant petitioner that the defendant-petitioner had no knowledge about the ex parte decree dated 22nd December, 1998 till the notice relating to sale of the hull of the defendant company by public auction was published in the newspaper on 5th May, 2000.

13. Mr. P.K. Dutta, learned advocate appearing for the defendant petitioner has contended that the petitioner came to know about the ex parte decree through the notice published in the newspaper for the first time on 5th May, 2000 and the petitioner was then advised to file an application to resist execution of the decree and such application was filed accordingly. It appears that the application for setting aside the ex parte decree being G.A. No. 2965 of 2001 was filed by the petitioner on 31st July, 2001. It further appears from the materials on record that by the order dated 27th July, 1999 passed by Kalyan Jyoti Sengupta, J. in the execution proceeding the Receiver was appointed to take symbolic possession of the hull of the defendant company and on receipt of the said order the Receiver duly served notice upon the defendant company and on receipt of the said order the Receiver duly served notice upon the defendant company and on receipt of the said order the Receiver duly served notice upon the defendant company intimating that he would take symbolic possession of the hull on the 5th day of August 1999 at 5-30pm.

14. From the materials on record I find that the ex parte decree was passed on 2nd December, 1998 whereas the application for setting aside the ex parte decree was filed by the defendant company on 31st July, 2001. As per the case of the

petitioner on 5th May, 2000 the petitioner for the first time came to know about the decree through the notice published in the newspaper and immediately thereafter she filed an application being G.A. No. 1088 of 2000 praying for stay of execution of the decree dated 22nd November, 1998. Even if it is accepted for the sake of argument that the petitioner for the first time came to know about the ex parte decree on 5th May, 2000, still there is inordinate delay of more than one year from the date of such knowledge in filing the application for setting aside the ex parte decree since the said application for setting aside the ex parte decree was filed on 31st July, 2001. It is contended by Mr. Dutta the learned advocate appearing for the petitioner that the petitioner was wrongly advised by the learned advocate concerned for which the application for setting aside the ex parte decree could not be filed by the petitioner within the statutory period of limitation from the date of such knowledge and since the petitioner was not at all negligent nor there was any laches on its part, the petitioner must not suffer due to inaction of its erstwhile advocate-on-record Mr. A. Dasgupta and wrong advice given by him. Mr. Dutta has drawn my attention to the copy of the letter dated 27th August, 2002 of Mr. A. Dasgupta the erstwhile advocate on record for the defendant company which was marked as annexure 'A' to the supplementary affidavit affirmed on behalf of the petitioner on 14th day of January, 2003. Mr. Dutta has relied on that letter in support of his contention that there was sheer inaction on the part of the said advocate-on-record for the petitioner and for such inaction the defendant petitioner cannot be held liable.

15. Mr. Dutta has further contended that Courts should adopt liberal approach in the matter of condonation of delay in such case and cited a number of reported decision viz. Collector of Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors., : (1987)ILLJ500SC , Sagayam Engineering Works v. Srivastava Tube Corporation, : AIR1989 Mad237 , Brij Kishore v. Jayantilal : AIR1989 Guj227 , and Bank of India v. Mehta Brothers and Ors., AIR 1991 Delhi 194 in support of his contention. He has further cited the case of State of West Bengal v. Howrah Municipality and Ors. reported in : [1972]2SCR874a wherein it has been held at page 757 (para 37) that if a party had acted in a particular manner on a wrong advice given by his legal adviser, he cannot be held guilty of negligence so as to disentitle the party to plead sufficient cause under Section 5 of the Limitation Act.

He has further cited the case of Somnath Banerjee and Ors. v, Vivek Salvi and Ors. reported in to buttress up his contention that a litigant should not suffer because of mistake of his lawyer.

16. Mr. G.P. Trivedi the learned senior advocate for the plaintiff decree-holder has contended on the other hand that no material worthy of credit is forthcoming from the defendant judgment debtor to explain long delay in filing the application for setting aside the ex parte decree. He has cited the case of P.K. Ramachandran v. State of Kerala and Anr., reported in AIR Supreme Court 2267 at page 2277 (para 6) wherein it has been held by the Hon'ble Supreme Court that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds. He has drawn my attention to the order dated 22nd December 1998 on which date despite service of notice the defendant did not appear and the ex parte decree was passed on the basis of the admission as referred to above. He has further pointed out that notice was given by the advocate-on-record of the plaintiff pursuant to the directions of the Court to the defendant and its advocate-on-record and the order dated 22-12-98 as quoted hereinabove reveals in clear terms that the said notice was kept on record. Mr. Trivedi has drawn my attention to the relevant proviso to Order 9 Rule 13 of the Code of Civil Procedure which clearly lays down that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

17. Mr. Dutta the learned advocate for the defendant petitioner has submitted that Mr. A Dasgupta who was the learned advocate-on-record for the defendant petitioner did not take any step on behalf of the petitioner on the date when the decree on admission was passed nor he ever advised the defendant petitioner to file an application for setting aside the said ex parte decree. As contended by Mr. Dutta, the defendant petitioner cannot be held liable for such inaction of the advocate concerned nor the defendant petitioner should suffer because of wrong advice given by the advocate concerned.

18. As already referred to, the ex parte decree was passed on 22nd December, 1998. The plea of the defendant petitioner is that the defendant petitioner came to know about the said ex parte decree for the first time when the notice was published in the newspaper on 5th May, 2000. It may be pointed out even at the risk of repetition that a copy of the report dated 6-8-99 of the Receiver appointed in the execution proceeding which is marked as annexure 'C' to the affidavit-in-opposition affirmed on behalf of the plaintiff on 20-1-03 clearly reveals that the Receiver duly served notice upon the defendant petitioner intimating that he would take symbolic possession of the hull on 5th day of August 1999 at 5.30pm. As per report of the Receiver the notice was served in the office of defendant petitioner. Even if it is accepted for the sake of argument that the defendant petitioner had come to know about the ex parte decree on seeing publication of the notice in the newspaper on 5th May, 2000 it remains enigmatic why the application for setting aside the ex parte decree was filed on 31st July, 2001 which was long after expiry of the statutory period of limitation from the date of such knowledge. Mr. Dutta has contended on behalf of the petitioner that his client was advised to take steps in the execution proceedings but the lawyer concerned did not advise his client to file the application for setting aside the ex parte decree within the statutory period of limitation from the date of knowledge. He has further contended that because of wrong advice of the advocate concerned the defendant petitioner instead of filing the application for setting aside the ex parte decree within the prescribed period of limitation took steps in the execution proceedings. It is significant to note in this context that the defendant petitioner has raised a plea that Mr. A Dasgupta who was admittedly one of the directors of the defendant petitioner as well as the advocate-on-record was negligent in not taking appropriate step in proper time and no step was taken by him for which the ex parte decree was passed and subsequently, the defendant petitioner took change from the said Mr. A Dasgupta to the petitioner's present advocate. As already indicated, copy of the letter of Mr. A. Dasgupta, solicitor and advocate had been marked as annexure 'A' to the supplementary affidavit on behalf of the defendant petitioner. The said letter is dated 27th August 2002. Thus it is manifestly clear from the materials on record that considerable time elapsed even after taking change of the said advocate and the present application for setting aside the ex parte decree was filed by the

defendant petitioner long after the statutory period of limitation. Another curious feature is that it has been specifically stated in paragraph 20 of the application that in conference held with the advocate on 18th June 2001 the petitioner was advised to file an application for setting aside the ex parte decree dated 22nd December, 1998 immediately. But the instant application for setting aside the said ex parte decree, as pointed out earlier, was filed on 31st July 2001. Reason for such delay remains wholly unexplained.

19. From the materials on record I have already pointed out that inordinate delay occurred in the matter of filing of the application for setting aside the ex parte decree for which condonation of delay is prayed for by the defendant-petitioner. The defendant-petitioner has taken a plea that because of wrong advice of his counsel he could not file the application for setting aside the ex parte decree within the prescribed period of limitation from the date of knowledge. Mr. Trivedi the learned senior advocate appearing for the plaintiff decree-holder has pertinently cited the case of Chandrica Prosad Kiran v. Sabitri Kiran (Rabidas) & State reported in 2001(2) CHN 347 wherein at page 351-352 (para 5) it was held as follows:--

'Giving careful thought to this it does not appear to my mind to be probable that a legal practitioner who conducted the proceeding under Section 125 Cr PC in question and on whom the petitioner used to place so much reliance in such respect would be so callous as to be ignorant of such a commonly known provision of law, namely Section 128 Cr PC. Whether that counsel was actually devoid of such knowledge or not does not bother this court. Because, we are to start with the premise that the advocate ought to have known this ABC of the law which he had been dealing with. In Bijanlata v. Bhudhur, reported in AIR 1965 Cal 578, this Court held that where the law is in an unsettled state, a mistake by the lawyer can be accepted as a sufficient cause, but when the matter is beyond dispute, a statement that the lawyer did not know the law cannot be accepted as sufficient cause..... In Harsha Ltd. v. Collector of Customs, (1989) 41 ELT 8(SC), the Apex Court held that when a party pleads mistaken legal advice it should be shown that the party sought advice of competent counsel and such advice was given exercising reasonable skill and care after proper examination

and due care and caution. Thus it is very clear that in our instant case there was no scope for the counsel of the petitioner to be confused or misled due to the existence of any conflicting legal provisions or decisions. On the other hand, the legal position was settled and well known being provided under a particular section of the Code. So it was not at all a fit case where such mistake or Ignorance of law on the part of a lawyer or the alleged fact of the petitioner being misled by the mistaken advice of that lawyer can be taken as sufficient cause for the purpose of condonation of delay.'

20. It is thus obvious that if the law is well settled a mistake by the lawyer cannot be accepted as a sufficient cause. Applying the principle of law enunciated in the case of Chandrika Prosad Kiran (*supra*) to the facts and circumstances of the instant case I find that the mistake or ignorance of law on the part of the advocate concerned, even if there be any, cannot be construed sufficient cause for condoning such inordinate delay in filing the application for setting aside the ex parte decree. In my view the series of decisions cited by Mr. Dutta the learned advocate for the defendant petitioner and mentioned above in support of his explanation for delay in filing the application for setting aside the ex parte decree have no manner of application to the facts and circumstances of the instant case and that is more so when it is manifestly clear from the materials on record that on the date of passing of the ex parte decree no step was taken by the petitioner in spite of service of notice and even if after the date of the alleged knowledge about the ex parte decree and change of lawyer no application for setting aside the ex parte decree was filed within the statutory period of limitation from the date of any such knowledge. Reference may be made in this context to *Bikram Doss v. Financial Commissioner and Ors.*, reported in : [1978]1SCR262 wherein it has been clearly laid down by Hon'ble Supreme Court that Section 5 of the Limitation Act is a hard task-master and Judicial interpretation has encased it within a narrow compass and a large measure of case laws has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by, lapse of time and that, therefore, a litigant who is not vigilant about his rights must explain every day's delay. Since no explanation for the entire period of delay worthy of credit is forthcoming from the defendant petitioner and utter lack of vigilance about the right of the petitioner is palpable on the face of the

materials on record, there can hardly be any justifiable ground for setting aside the ex parte decree passed on 2nd December, 1998. Reference may also be made in this context to *Sujit Chatterjee v. Rita Chatterjee*, reported in 2001(2) CLJ 308 at page 312.

21. For the foregoing reason I find no justifiable ground for allowing the application for setting aside the ex parte decree dated 22nd December 1998 after condoning the delay. The application for setting aside the ex parte decree dated 22nd December 1998 being G.A. No. 2965 of 2001 is accordingly dismissed. Interim order of stay passed earlier stands vacated. No order as to costs.

Pryer for stay of operation of the order made by the learned advocate for the petitioner is considered and rejected. Parties to act on a Xerox signed copy of this dictated order on usual undertaking.

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