



2025:DHC:2849



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 22nd April, 2025**

+ FAO 482/2017

HOLY FAITH INTERNATIONAL PVT LTDAppellant

Through: Mr. Raj Kamal, Mr. Aseem
Atwal, Ms. Stuti, Mr. Harneet
Singh and Mr. Manish Kumar
Sharma, Advs.

versus

CROSS COUNTRY HOTELS LTD & ANRRespondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)**

1. This appeal is being preferred by the appellant under Order XLIII Rule 1(c) read with Section 151 of the Code of Civil Procedure, 1908 [“CPC”], for setting aside the impugned order dated 18.08.2017 passed by the learned ADJ-01 (South) New Delhi [“**Trial Court**”], whereby its application under Order IX Rule 9 of the CPC was dismissed.

2. Having heard the learned counsel for the appellant and upon perusal of the record, this Court has no hesitation in holding that the present appeal is bereft of any merits.

3. It is borne out from the record that the suit instituted by the appellant for recovery for earnest money in terms of MoU¹ dated 02.04.2007 besides damages and *mesne* profits came to be dismissed for non-appearance of the Authorized Representative of the appellant and his counsel on 20.03.2014.

¹ Memorandum of Understanding



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The present application under Order IX Rule 9 of the CPC was filed on 18.07.2014, which came to be dismissed *vide* the impugned order dated 18.08.2017 and, it would be expedient to reproduce the impugned order which reads as under:

“Vide this order, I shall decide the application of plaintiff filed U/O.IX R.9 CPC and application for condonation of delay in filing the application U/O.IX R.9 CPC.

The suit was dismissed in default vide order dated 20.03.2014. The application has been filed for its restoration by submitting that clerk of counsel for the applicant did not note the date of hearing in the court diary of the counsel and when clerk of the counsel was preparing list of disposed of files in second week of April, 2014, he noticed that the present matter was missed and was listed on 20.03.2014. The applicant has submitted that it was then that the clerk of counsel for applicant enquired and then the present application has been filed. The applicant has also filed an application for condonation of delay in filing the restoration application. There is a delay of 62 days in filing the application for restoration. It is submitted that restoration application was filed on 17.04.2014 but it was done inadvertently by quoting wrong provision and further the application was incomplete because no substitution application as well as application for condonation of delay in filing the substitution application, no application for setting aside the abatement and condonation of delay in setting aside the abatement was filed and thus, entire matter needed a comprehensive and proper filing of these applications. The applicant has prayed for condonation of delay in filing the restoration application and for allowing the same.

Perusal of record reveals that ever since the filing of the suit, the plaintiff has not been prosecuting the matter diligently. Written statement was filed by defendant no.1 on 07.04.2011 and the matter was adjourned four times and it was on the fifth date i.e. on 06.07.2012 i.e. more than one year three months of filing of written statement that the replication was filed.

Further, plaintiff was informed on 19.04.2012 about the fact of defendant no.2 having passed away on 20.01.2012, however, despite repeated directions the application to bring on record LRs of deceased defendant no.2, was filed on 05.04.2013 with application for condonation of delay i.e. after one year of getting the information. Again on 30.04.2013, Ld. counsel for plaintiff withdrew these applications by submitting that he would move appropriate application in due course. Thereafter, for three



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consecutive dates of hearing, none appeared for plaintiff. On fourth date i.e. on 27.11.2013, adjournment was sought for the reason that the Ld. counsel for plaintiff was not well and the Hon'ble High Court on noticing that again on next date of hearing i.e. 20.03.2014, none appeared for plaintiff and also noticed non-prosecution of the suit diligently by plaintiff, held that the suit stands abated against defendant no.2 and also dismissed the suit in default. The applicant/plaintiff despite coming to know in April about the dismissal of the suit, filed an application for restoration 62 days after dismissal of the suit, it is further noticed that the plaintiff has been equally negligent in proceedings related to these two applications and it was so observed by this Court in order dated 24.07.2017.

In view of these observations, the plaintiff/applicant has been unable to give any good cause for allowing the present application and the present application is accordingly dismissed.

File be consigned to Record Room after necessary compliance.”

4. On a careful perusal of the aforesaid order, it would show that the appellant had not been diligently pursuing the matter. There was explained no sufficient cause for delay of 62 days in filing the application for restoration. Nothing was explained by the appellant so as to show that he was prevented from any sufficient cause or some issues beyond its control in filing the application for restoration within the stipulated period of time. A flimsy excuse is taken by the appellant, wherein the blame is put on the Clerk of the counsel concerned. It is also borne out from the record that the suit already stood abated against respondent No.2 as well for non impleadment of his legal heirs.

5. In view of the aforesaid facts, this Court is not inclined to set aside the impugned order dated 18.08.2017 in the present appeal. The appeal is accordingly dismissed.

DHARMESH SHARMA, J.

APRIL 22, 2025/*sadiq*