

13 CS DJ ADJ 17386/16 M/S KLLIFTON FORGE PVT LTD Vs. GLOBAL  
ISPAT LTD

25.01.2024

Present: Sh. Jai Batra, Ld. Proxy counsel for Sh. Kunal Anand, Ld.  
Counsel for plaintiff.  
Sh. Vishal Saxena, Ld. Counsel for defendant.

Reply filed on behalf of plaintiff. Copy supplied. Same is taken  
on record.

Matter is fixed for argument on application u/s 151 CPC filed on  
behalf of the defendant/applicant for recalling of order dt. 13.10.2023 along  
with an application u/s 5 of Limitation Act seeking condonation of a delay of  
12 days in filing of application u/s 151 CPC.

For the reason mentioned in the application u/s 5 of Limitation  
Act, delay is condoned. **Application u/s 5 of Limitation Act stands  
allowed.**

Ld. Counsel for applicant submits that, no notice for application  
u/o IX Rule 9 CPC was issued to applicant and vide impugned order dt.  
13.10.2023, this court adjudicated said application. It is further submitted  
that, present matter should not have been restored as plaintiff has defaulted  
on various dates of hearing and infact given mis-statement qua Directorship  
of Late Ms. Aarti Kapoor. It is also submitted that, Ms. Aarti Kapoor has  
never been a Director of plaintiff company as per Master Data available on  
MCA Website.

*Per contra*, Ld. Counsel for non applicant/plaintiff submits that,  
defendant was duly aware about proceedings of application u/o IX Rule 9  
CPC and infact appeared on 15.07.2023 before Ld. Predecessor of this court

whereby application u/s 151 CPC for restoration of application u/o IX Rule 9 CPC was allowed subject to cost of Rs. 10,000/- which was duly paid by non-applicant on 11.10.2023.

Submissions heard.

Briefly stated, present suit for recovery of Rs. 11,00,000/- filed on behalf of the plaintiff towards recovery of dues qua supplied material.

Perusal of the record reveals that, issues were framed on 18.07.2017 and matter was pending for PE since then. Since, plaintiff failed to lead evidence despite multiple opportunities, its right for PE stands closed vide order dated 17.07.2019 and matter was listed for DE. However, on 25.09.2019, plaintiff remained absent and accordingly suit was dismissed in default. Thus, to recall the impugned order dt. 25.09.2019, an application u/o IX Rule 9 CPC filed on behalf of the plaintiff on 20.01.2020 upon which notice were issues but, thereafter there was outbreak of Covid-19 and during the said period application u/o IX Rule 9 CPC also dismissed for non prosecution vide order dated 01.12.2020.

Against said impugned order dt. 01.12.2020, plaintiff again filed an application u/s 151 CPC for restoration of application u/o IX Rule 9 CPC during Covid-19 period itself upon which notice were issued and Ld. Counsel for defendant marked his appearance on 11.07.2022. Record also reveals that, vide order dated 15.07.2023 Ld. Predecessor of this court after hearing arguments on behalf of both parties, restored application u/o IX Rule 9 CPC subject to payment cost of Rs. 10,000/- and fixed it for arguments for 13.10.2023.

On 13.10.2023 matter was passed over once for 12:10 PM and since none appeared on behalf of defendant and after hearing submissions on behalf of plaintiff, application u/o IX Rule 9 CPC stands allowed on merits

and in the interest of justice, subject to further cost of Rs. 15,000/- that is to be paid to the defendant.

Thus, considering the facts and circumstances of the present case and also the proceedings thereof, this court does not find any merit in the submissions made by defendant as he was very well present before Ld. Predecessor of this court on 15.07.2023, when the matter was fixed for arguments on application u/o IX Rule 9 CPC. Moreover, while disposing of application u/o IX Rule 9 CPC, this court has duly taken care of entire court record and passed the order after considering the same in the interest of justice. **Accordingly, application u/s 151 CPC as filed by defendant stands dismissed.**

Since, main case is restored at its original number and it was at the stage of DE at the time of dismissal, put up for DE on **20.04.2024**.

(SHILPI M JAIN)  
ADJ-05 (SW)/Dwarka Courts  
New Delhi: 25.01.2024