

Civ. DJ No. 610080/2016

M/s. M. S. Associates

Vs.

M/s. Associates Forex Service Ltd.

22.02.2020

Present : Sh. Chander Mal, Ld. Counsel for the plaintiff.
Ms. Tejinder Kaur, Ld. Counsel for the defendant
no. 1 to 4.

1. Defendant no. 5 has been duly served by way of publication in the newspaper the Statesman dated 05.05.2017. It was also given liberty to file WS within statutory period vide order dated 12.07.2017, however, none has appeared on behalf of the defendant no. 5 nor any WS is filed till date. Defendant no. 5 is accordingly proceeded ex-parte.

2. Matter is listed today for arguments on all the pending applications. There is one pending application filed by the plaintiff under **Order 8 Rule 1 and 10 CPC** seeking striking off the defence of defendant no. 1 to 4 as the WS has not been filed within statutory period of limitation.

3. There is another application of the defendant no. 1 to 4 U/s **5 Limitation Act** seeking condonation of delay of 780 days in filing the WS. Submissions of both the application heard. Record carefully perused.

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4. The present suit was filed under Order 37 CPC. A leave to defend application was filed on behalf of defendant no. 1 to 4 Vide order dated 22.10.2013, on no objection given by the plaintiff, the leave to defend application was allowed and defendant no. 1 to 4 were directed to file their WS within the statutory period prescribed by law with advance copy to the opposite party. The written statement was finally filed on 13.01.2016. It is submitted on behalf of the defendant that during the period of 780 days, two counsels were changed by the defendant no. 1 to 4 as the earlier counsels were not appearing before the court and not taking appropriate steps for prosecution of the present suit.

5. The application seeking condonation of delay though accompanied by an affidavit of AR of the defendant no. 1 company is not supported by any affidavit of defendant no. 2, 3 and 4. It is also not accompanied by any complaint made by earlier counsels for alleged delectation of their duties. Perusal of the record also shows that neither any AR of defendant no. 1 company nor defendant no. 2 to 4 had ever appeared before the court even on a single date of hearing. In these circumstances, the reasons for the delay as stated in the application under consideration do not appear justified or reasonable.

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6. Still considering in the paramount interest of justice that the matter should be decided after giving reasonable opportunities to both the parties for contesting the case, the application of the defendant is allowed and WS is taken on record subject to payment of cost of Rs. 50,000/- to be paid jointly by the defendant no. 1 to 4 to the opposite party to compensate the delay.

7. The cost be paid on NDOH and in case, the cost is not paid, the WS shall not be taken on record and court shall proceed further by striking off the defense of defendant no. 1 to 4. With these directions, both the above mentioned applications stand disposed off.

8. There are two other pending applications filed on behalf of defendant no. 1 to 4, one is under **Order 7 rule 11 CPC** and another application under **Order 1 rule 10 CPC** seeking rejection of plaint and deletion the names of defendant no. 1 to 4 from the array of parties. Arguments on the said applications heard. Replies are already on record.

9. Both the applications have been filed on the same ground alleging that there is no cause of action against

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defendant no. 1 to 4. the cheque on which the plaintiff is relying has been issued by defendant no. 5 and defendant no. 1 to 4 have nothing to do with defendant no. 5 company.

10. It is a settled proposition of law that in order to decide if the plaint is to be rejected for want to cause of action, only the plaint and the documents filed along with the plaint have to be seen and the defense of the defendant is not to be considered at the stage of deciding application under Order 7 Rule 11 CPC. In the present case, plaintiff has categorically pleaded the defendant no. 1 is a company well known to the plaintiff of which defendant no. 2 to 4 are the Directors. The plaintiff had invested a sum of Rs. 5,00,000/- in defendant no. 1 company for a period of three months and Sh. Umesh Pandey was authorized signatory of defendant no. 1 company. After a period of three months, the authorized signatory Sh. Umesh Pandey issued a cheque of defendant no. 5 company to repay the said amount which got dishonored. Hence, the present recovery suit has been filed.

11. Since, there are specific averments made in the plaint against defendants no. 1 to 4, they are a proper party in the present suit and there is no ground for deleting them from

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the array of parties at this stage. Similarly, cause of action qua defendant no. 1 to 4 is clearly reflected from the plaint and there is no reason for rejecting the plaint under Order 7 Rule 11 CPC. Whether or not defendant no. 1 to 4 have any liability towards the plaintiff is a matter of evidence which can be decided after recording and appreciating of evidence led by both the parties and not at this preliminary stage. Both the applications filed by defendant no. 1 to 4 that are under Order 7 Rule 11 CPC and under Order 1 Rule 10 CPC are accordingly, dismissed being without any merit.

12. Let the replication be filed on or before NDOH with advance copy to the opposite party.

13. **Re-notify for completion of pleadings, A/D of documents and for framing of issues on 30.03.2020.**

14. **Parties are directed to appear in person and produce original documents for A/D of documents.**

(Shivali Sharma)
ADJ-03/West/Delhi.
22.02.2020