

Misc DJ337/22
MEENAKSHI POLYMERS PVT. LTD. Vs. TOP TEAM
MACHINE PVT LTD

04.06.2024

Present: Sh. Amit Joshi, Ld. Counsel for the
applicant/plaintiff.

1. Order disposes off two applications, one filed by the applicant/plaintiff under Order IX Rule 4 read with Section 151 CPC and another application under Section 5 of the Limitation Act read with Section 151 CPC.

2. It is the submission of the learned counsel for the applicant/plaintiff that his clerk inadvertently noted the wrong date of 29.04.2022 instead of 01.12.2021 in the diary and hence, the applicant/plaintiff could not appear on the said date. He further submits that the applicant/plaintiff had appeared on each and every date since the filing of the suit and prays that the application under Order IX Rule 4 read with Section 151 CPC may be allowed and the delay of 160 days in filing the said application may also be condoned. The application is also supported by an affidavit together with copies of lawyer's diary. Reliance has also been placed on the judgment of Hon'ble High Court of Delhi in the case of ***Bhikram Masih Vs. M/s Trig Detectives Pvt. Ltd. [WP (C) 5002/2019 dated 03.01.2022]***, wherein the Hon'ble High Court has observed as under:-

“merely because of such a wrong entry or a wrong date being entered, inadvertently, upon an adverse order being passed, the litigant ought not to suffer.”

3. I have heard learned counsel for the applicant/plaintiff and have also gone through the record.

4. Perusal of the record reveals that none has appeared on behalf of the applicant/plaintiff despite various opportunities granted to it on 30.01.2021, 02.02.2021, 11.08.2021 and further, on 01.12.2021 also, none had appeared on behalf of the plaintiff since morning despite various repeated calls and on that day itself, the Ld. Predecessor dismissed the suit in default of appearance of the plaintiff.

5. Considering the submissions made by the learned counsel for the applicant/plaintiff and having regard to the fact that no prejudice is likely to cause to the opposite side if the said applications are allowed as the defendant is already ex-parte, both the said applications are disposed off as allowed and the suit bearing CS (Comm) No.375/21 is restored to its original number and original position/stage, subject to cost of Rs.10,000/-, to be deposited by the applicant/plaintiff in the office of DLSA, Central, Delhi before the next date of hearing and also to file its receipt.

Matter to now come up on **23.08.2024** for the stage already fixed i.e. PE.

(NIKHIL CHOPRA)
District Judge/Commercial Court-06
Tis Hazari Courts, Delhi
04.06.2024