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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 158/2016**

M/S BUCON INFRATECH PVT LTD

..... Plaintiff

Through: **Mr. Dhiraj Sachdeva, Advocate.**

versus

M/S RUDRA BUILDWELL PROJECTS PVT LTD Defendant

Through: **Mr. Pawan Singh Bindra, Senior Advocate with Mr. Ravinder Singh, Ms. Raveesha Gupta, Mr. Srisatya Mohanty, Advocates.**

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **22.12.2022**

I.A. 21979/2022 (for exemption)

The application for exemption is allowed, subject to all just exceptions.

The application stands disposed of.

O.A. 82/2022 (appeal against an order of JR dated 31.03.2023) & I.A. 21980/2022 (for condonation of delay) in CS(COMM) 158/2016

1. O.A. 82/2022 has been filed by the defendant against an order of the Joint Registrar dated 31.03.2022, by which appellant/defendant's right to cross-examine the plaintiff's only witness (PW-1) was closed and the plaintiff's evidence was also closed. I.A. 21980/2022 has been filed for condonation of delay of 223 days in filing O.A. 82/2022.

2. The suit is a commercial suit. It was instituted in March, 2016.



Plaintiff's evidence commenced on 26.10.2018. On that date, cross-examination of PW-1 was deferred at the request of learned counsel for the defendant. Cross-examination was deferred on the next three dates of hearing- on 16.01.2019 at the request of learned counsel for the plaintiff, and on 29.03.2019 and 11.07.2019 at the request of learned counsel for the defendant. The cross-examination of PW-1 commenced on 06.09.2019 and after partial cross-examination, it was deferred at the request of learned counsel for the defendant. He was cross-examined further on 20.11.2019, when the proceedings were adjourned to 31.01.2020. On 31.01.2020, there was no representation on behalf of the defendant, but the PW-1 was also not present. The matter was, therefore, adjourned to 20.04.2020.

3. The proceedings, thereafter, were interrupted by the COVID-19 pandemic and the defendant remained unrepresented on each and every date when the matter was listed until 27.09.2022. During this period, the matter was listed before the Joint Registrar on 10 occasions. A perusal of order sheets of these dates of hearing show the following:-

Date of Hearing	Order
13.08.2020	Defendant was not represented. The matter was adjourned in view of the circular of the Court regarding restricted functioning of the Court.
11.11.2020	Adjourned due to non-appearance of parties.
23.02.2021	Adjourned due to non-appearance



	of the defendant.
06.09.2021	Adjourned due to non-appearance of defendant. It was directed that a copy of the order sheet be sent to learned counsel for the defendant.
21.10.2021	Adjourned due to non-appearance of defendant and non-appointment of the remote point coordinator for recording evidence through video-conferencing. It was directed that a copy of the order sheet be sent to learned counsel for the defendant.
26.11.2021	Adjourned due to non-appearance of defendant. Last opportunity granted to the defendant to cross-examine PW-1 on the next date of hearing. It was clarified that if PW-1 is not examined on the next date of hearing, right of the defendant to cross-examine PW-1 shall stand closed. It was directed that copy of the order sheet be sent to the defendant and to learned counsel for the defendant.
19.01.2022	Adjourned due to non-appearance



	of the defendant and in view of the emergent situation due to COVID-19 pandemic. It was directed that a copy of the order sheet be sent to the defendant and to learned counsel for the defendant.
31.03.2022	It was noted that copy of previous order sheet was sent to the defendant and to learned counsel for the defendant. In view of the defendant's continued non-appearance, opportunity of the defendant to cross-examine PW-1 was closed and the plaintiff's evidence was also closed.

4. Mr. Pawan Singh Bindra, learned Senior Counsel for the appellant/defendant, raises three grounds in support of the appeal and the application for condonation of delay: -

- a. He states that the erstwhile counsel for the defendant lost track of the proceedings in the present suit due to the COVID-19 pandemic, which resulted in the defendant's non-appearance during the aforesaid period.
- b. He refers to the contents of paragraph 12 of the appeal, wherein it is stated that the defendant found out about the hearing in November, 2022 when the officer of the company was checking



certain records of the company and the details of this case came up.

c. He submits that one of the officials of the company who was dealing with this matter, Ms. Neena Narang, has left the employment of the company.

5. I am unable to accept these contentions. As far as the question of delay is concerned, it appears from the order of the Joint Registrar dated 27.09.2022 that the defendant was, in fact, represented by Mr. Akshat Gupta, Advocate on that date. The record reveals that Mr. Akshat Gupta had filed a *vakalatnama* on behalf of the defendant only on 14.09.2022. As the learned Presiding Officer was on leave on 27.09.2022, the proceedings were adjourned to 01.12.2022. This date was thus fixed when the defendant was duly represented, and not during the period it was not appearing. On 01.12.2022, the learned Joint Registrar recorded that a new counsel for the defendant sought an adjournment as she had been recently engaged. It was not contended that the defendant was unaware of the date of hearing. It is, therefore, difficult to accept the contention that the defendant was unaware of the proceedings in the present case until November, 2022, as stated in paragraph 12 of the appeal.

6. As far as the defendant's contention based on disruption due to the COVID-19 pandemic is concerned, even accepting that parties and their counsel could legitimately have lost track of a particular case in the wake of the pandemic, it appears to me that sufficient precautions were taken by the learned Joint Registrar before closing the defendant's right to cross-examine PW-1 in this case. From the orders enumerated above, it is clear that the order sheets were sent to the learned counsel for defendant



on four occasions and to the defendant itself on 26.11.2021 and 19.01.2022. The learned Joint Registrar has, thus, taken more than adequate steps to obviate the possibility of a pandemic-induced default on the part of the defendant. It is not stated in the appeal, which incidentally is filed by the defendant's new counsel, engaged on 01.12.2022, that copies of the orders were not received by the defendant. The defendant only claims that it was not informed of the dates by its erstwhile counsel, but this does not explain its non-appearance even when orders were sent to it directly.

7. Mr. Dhiraj Sachdeva, learned counsel for the plaintiff, has also handed up in Court several orders of this Court in other proceedings involving the present defendant between June, 2022 and in August, 2022, and in arbitration proceedings between the same parties in March, 2022 in which the defendant was duly represented. In three orders of this Court (order dated 03.06.2022 in O.M.P.(MISC.) 3/2022, order dated 01.08.2022 in O.M.P. 6/2022 and order dated 26.08.2022 in O.M.P. (ENF) (COMM) 250/2018 and 254/2018) in fact, the defendant was represented by Mr. Akshat Gupta, who filed *vakalatnama* on its behalf in the present suit also in September, 2022. Copies of the aforesaid orders are taken on record. In these circumstances, it appears that the defendant's reliance on the COVID-19 pandemic is also misconceived as it was duly prosecuting several cases during the concerned period.

8. The resignation of Ms. Neena Narang from the employment of the defendant also does not take the matter further. There is no document on record, nor any averment in the appeal, to support the assertion that she was dealing with the present litigation.



9. As stated above, in view of the specific orders of the learned Joint Registrar, transmitting the orders to the defendant itself, in addition to its counsel, the attempt of the defendant to lay responsibility at the door of the erstwhile counsel alone, is not acceptable. In any event, the defendant was aware of the present suit and engaged a new counsel in September, 2022. Even thereafter, the present appeal was not filed until December, 2022. Limitation for filing an appeal against an order of the Joint Registrar is 15 days from the date of the order. From any perspective, the delay in filing the present appeal even after September, 2022, is inordinate and no justification is given for the same.

10. Mr. Sachdeva has relied upon the judgment of this Court dated 05.07.2022 in CS (COMM) 144/2019, wherein the Court has emphasised the objective of the Commercial Courts Act, 2015 of disposal of commercial suits with due expedition. I am of the view that granting relief to the defendant in the present case, despite the facts noted above, would be unjustified even in an ordinary suit, and even more so in a commercial cause.

11. For the aforesaid reasons, the application and appeal are dismissed.

PRATEEK JALAN, J

DECEMBER 22, 2022

‘vp’/