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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 341/2017**
MAHESH GUPTA & ANRPlaintiff

Through: Mr. Deepanshu Nagar, Advocate

versus

DHEERAJ KUMAR & ANRDefendant

Through: None

CORAM:
JOINT REGISTRAR (JUDICIAL) Dr. AJAY GULATI

ORDER

% **22.07.2024**

IA. No. 20491/2023 filed by the plaintiff for seeking leave to file additional evidence by way of affidavit of Mr. Surva Narayan Pati PW-I. &

IA. No. 20492/2023 filed by the plaintiff seeking condonation of delay of 601 days in re-filing the application (I.A. No. 20491/2023).

1. Plaintiffs seek to bring on record an additional affidavit in evidence of PW 1 Mr. Surya Narayan Pati whose affidavit in evidence was initially filed in the year 2018. The additional affidavit dt. 23.8.2019 was filed without seeking leave of the Court consequent to which the Joint Registrar, on 30.1.2020, directed the plaintiff to move an appropriate application in this regard. Soon thereafter, however, Covid struck. Eventually, the application came to be filed on 13.9.21. However, by that time defendant's counsel stopped putting in appearance and a fresh counsel entered appearance on 23.11.22 on behalf of the defendants. Subsequently, matter was referred to the mediation process but which did not yield any result. It was on 22.3.23 that



the Joint Registrar informed the plaintiff's counsel that the plaintiff's application for filing an additional affidavit in evidence was lying under objections. Pursuant thereto, IA no. 20492 of 2023 was filed seeking condonation of 601 days in re-filing IA no. 20491.

2. The application for condonation of delay in re-filing has been strongly opposed on the ground that the application is practically devoid of even a single reason to condone the delay.

3. *I have carefully considered the rival submissions.*

4. Law has always come to the aid of a diligent litigant. However, lack of diligence on the part of the plaintiff in this case is much too evident. Interestingly, plaintiff has been candid enough to admit its lack of diligence in *para 4* of the application (IA no. 20492/2023) wherein it has been stated that plaintiff was not aware that the application was lying under defects and was under the impression that the IA was on record. It needs no specific highlight that once an application has been filed, if the litigant is diligent enough to follow it up, there can only be 2 outcomes – *first*, that the IA is listed for hearing, and *second* that it has been put under objections in which case the litigant has to follow up with the Registry. In either situation, concerned litigant has to be diligent enough. If an IA has been filed and has been passed by the Registry, it is bound to come up for hearing. An IA which is not under defects, cannot possibly be lying with the Registry without being listed before the appropriate Court.

5. As has already been highlighted above and which fact finds a prominent mention in the IA itself (*para 6*), the Counsel for the plaintiffs was informed by the Joint Registrar that their application is lying under defects. Thus, for over a year and a half after filing the IA, plaintiffs simply forgot about the IA. Such a



conduct is not condonable. The only ground that has been put forth for seeking condonation is that defendant's counsel stopped appearing and it took close to 7 dates for a new counsel to appear for the defendants. Such a ground can hardly be of help to the plaintiffs. Whether or not defendants were being represented should not have shut out the plaintiffs from ensuring that their IA gets listed. Infact, even after a new counsel had put in appearance for the defendants, plaintiffs did not take steps to remove the defects and get the IA listed. At this stage, the excuse of 'mediation efforts' between the parties has been taken which however is not tenable, in the best understanding of this Court. Consequently, I see no reason to condone such a huge delay in re-filing. As a corollary, the application for seeking condonation of delay in re-filing is declined.

6. Though not required to go into the merits of the IA seeking filing of additional affidavit since the delay in re-filing cannot be condoned but even the said application does not disclose any reason for the additional affidavit to be permitted to be filed. The only reason mentioned for filing the additional affidavit is that it took a long time for the technical aspects of the plaintiff's product to be verified and detailed, and to compare the same with the technical details of the defendant's product. This Court can't help but observe that it is plainly illogical to submit on the part of the plaintiffs that a design infringement suit was filed without the plaintiffs having any technical details of their own products as also those of the defendant's product. Issues in this suit were framed on 04.12.2017 and although four weeks were granted to file the affidavit in evidence, affidavit was eventually filled in May'2018. Subsequently, PW-1 has been partly examined-in-chief twice. There is no explanation as to whether the technical



details which purportedly form a part of the additional affidavit were **or** were not available at the time when the initial affidavit in evidence was filed **or** what precluded the plaintiffs from making those technical details a part of the initial affidavit. This case represents a classic case of increasing the litigation cost for absolutely no reason. As a necessary consequence of the dismissal of the IA no. 20492 of 2023 for seeking condonation of delay in re-filing IA no. 20491 of 2023, said IA for filing additional affidavit in evidence is also dismissed.

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7. Previous order-sheets reveal that this case has not been listed before the Hon'ble Court after 23.11.2022. Consequently, matter be put up before the Hon'ble Court on 03.09.2024, for further directions.

**Dr. AJAY GULATI (DHJS),
JOINT REGISTRAR (JUDICIAL)**

JULY 22, 2024/sk

[Click here to check corrigendum, if any](#)