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Calcutta High Court

Case No: A.P.O.T. No. 121 of 2005 and G.A. No. 600 of 2005

East Bengal Steam Services Ltd.		APPELLANT
	Vs	
East Bengal Steam Service and Engg. Works Workers Co-operative Industrial Society Ltd. and Others		RESPONDENT

Date of Decision: April 13, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 9, Order 9 Rule 2, Order 9 Rule 5
- Companies Act, 1956 - Section 560, 560(2) , 560(3)

Citation: (2006) 3 CHN 201 : (2005) 2 ILR (Cal) 72

Hon'ble Judges: V.S. Sirpurkar, C.J; Asok Kumar Ganguly, J

Bench: Division Bench

Advocate: Ranjan Bachawat and Usha Doshi, Swapna Paul, for the Appellant;Anitava Das and Amal Kumar Chatterjee, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Sirpurkar, C.J.

In this appeal, the order by the learned Single Judge of this Court is in challenge. By that order, the learned Judge allowed the application filed by the respondent East Bengal River Steam Services & Engineering Works Workers'' Co-operative Industrial Society. By that application, the Society had sought dismissal of Suit No. 1 of 1983 filed by the present appellant against the respondent. In their application it was pointed out by the respondent that this suit was instituted in the year 1983 and yet the plaintiff appellant herein did not serve the defendant No. 1 with the summons for the instant suit or any copy of the plaint. The learned Judge accepted this application and has dismissed the suit necessitating the present appeal.

2. Following factual background would help in understanding the controversy. A civil suit came to be filed by the defendant No. 4 United Bank of India (hereinafter called ''the Bank'') praying therein for a decree of Rs. 1,13,45,161.75 and other reliefs as against the present appellant. This was a Suit No. 133 of 1977. In this suit, by an order dated 1.12.1977, this Court appointed Joint Receivers over hypothecated goods of the plaintiff. On 25.08.1980, the present respondent filed an application in the said suit for obtaining lease of the factory and other assets of the plainiff company. On November 11, 1980, that application was allowed. That order came to be modified by a subsequent order dated 24th November, 1980. An appeal was preferred against the two orders before the Division Bench. However, the Division Bench dismissed the said appeal. The respondent herein, therefore, deposited a sum of Rs. 23,71,247/- with the Joint Receivers as a consideration for purchase of the concerned assets. The amount was accepted by the Receivers and the money was kept in the fixed deposit account of the Receivers in the High Court Branch of the defendant No. 4 Bank. A special petition was also filed for leave to appeal against this order dated 24.7.1981. However, the Supreme Court confirmed the said order and dismissed the SLP. Thereafter, on September 22, 1981, the Division Bench passed an order for completing the sale process and for delivery of possession of the concerned property. Therefore, another SLP was filed against the order of the Division Bench dated 22.09.1981. The original defendant No. 4 Bank also filed SLP against these orders. By orders dated 30.10.1981 and 9.11.1981, the Supreme Court was pleased to pass interim orders directing the Joint Receivers to hand over the possession of the factory to the present respondent to run the same under the overall supervision of the Joint Receivers. The Joint Receivers accordingly handed over the possession of the factory to the respondent, first respondent herein. The Supreme Court also passed the orders dated 18.10.1982 and 22.10.1982 in the SLP field by the appellant plaintiff company and the defendant No. 4 Bank. Thereafter, the defendant No. 4 Bank moved an application before the Court for an order directing the Joint Receivers to call a meeting of the parties. The said application was dismissed by an order. dated 13th December, 1982. Again an appeal was preferred from the order dated 13th December, 1982 which appeal was also dismissed by the Division Bench by its order dated 17.12.1982. This is how the present respondent became entitled to the conveyance of the concerned assets and properties.

3. It is then that Suit No. 1 of 1983 came to be instituted by the appellant plaintiff who was the defendant in the original suit field by the Bank. In that suit, the orders dated 11th November, 1980, 24th November, 1980, 22nd September, 1981 and 23rd September, 1981 and the orders dated 18th October, 1981,18th October, 1982 and 22nd October, 1982 and all subsequent orders made in Suit No. 133 of 1977 were challenged and a declaration was sought that all these orders were null and void. Thereafter, the suit was completely forgotten and even a writ of summons was not served on the respondent herein. The aforementioned application therefore, came to be filed for dismissal of the suit in the year 2003. In this Suit No. 1 of 1983, the

plaintiff appellant prayed for an interlocutory order restraining the Joint Receivers from registering the concerned deed in favour of the repondent herein and such order was passed on 11.1.1983.

4. It is an admitted position that the original Suit No. 133 of 1977 now stands transferred to the Debts Recovery Tribunal-I, Kolkata and is renumbered as TA No. 449 of 1995 and is pending there. It refers to the Suit No. 1 of 1983, apart from the declaration regarding the interlocutory orders being null and void, other declaration was prayed, that the present respondent No. 1 had any right to buy and purchase right, title and interest in respect of the leasehold properties mentioned in the plaint. So also a perpetual injunction was sought against defendant Nos. 2 and 3, they being the Joint Receivers, from executing and on registering any conveyance in favour of the defendant No. 1 in that suit, that is, the respondent herein.

5. As stated above, the suit has been pending in the Court for more than 22 years and it was the contention of the respondent herein that not even a summons was served on it by the plaintiff appellant. The learned Judge took the view that under Rule 6 of Chapter VII of the Original Side Rules, a writ of summons is required to be delivered to the Sheriff for service within 14 days from the date of the filing the plaint. The learned Judge further held that such summons was never delivered by the plaintiff appellant. It is further held by the learned Judge that Chapter X Rule 35 provides that the suit shall be dismissed if it has not appeared in the prospective or warning or peremptory list within six months from the date of institution. The learned Judge observed that the suit was not even placed in the general list under Rule 2 of Chapter X of the Original Side Rules and nothing was done. The learned Judge also observed that even after the application was filed for dismissal of the suit, the plaintiff appellant did not apply for extension of time to deliver the writ of summons to the Sheriff and for the extension of the returnable date. The learned Judge has viewed all these is total negligence. The learned Judge further observed that under the circumstances the suit was liable to be dismissed and since a fresh suit is hopelessly barred, a permission at this stage would mean depriving the respondent defendant of the right crystallized in them by the statute of limitation. It is this order which is in appeal before us.

6. Mr. Bachawat, the learned Counsel appearing on behalf of the appellant plaintiff very earnestly pleaded before us that this is the classic example of the litigant suffering on account of the negligence shown by Counsel. Relying on the averments of the affidavit-in-opposition to the application for dismissal, the learned Counsel pointed out that the Counsel engaged to file the Suit No. 1 of 1983 was Mr. A.N. Dawn who was an Advocate-on-record and he had expired. It was reiterated that the plaintiff had handed over all the necessary papers and documents and all the necessary changes, fees and amounts for the necessary expenses for filing the suits and taking all steps. He further points out that in the absence of Late Mr. A.N. Dawn, a petition was made which was affirmed by him and he was told by the said

Advocate that the same was moved before the Master and the necessary order had been obtained for serving the writ of summons. The learned Counsel also heavily relied on that application and contended that the plaintiff being a "layman" was not expected to know the procedural steps to be taken and had to entirely rely upon the Advocate and that the plaintiff appellant was also under the impression that all the steps were taken properly. The learned Counsel further contended on the basis of the affidavit-in-opposition that after the death of Mr. A.N. Dawn, it took the plaintiff considerable time to collect the papers and other documents and even the plaintiff had not been able to collect the entire papers and had, therefore, engaged the present Advocate-on-record, one Usha Doshi, Advocate who informed the plaintiff regarding the application made by the respondent defendant which was to come before the Court. The learned Counsel also denied that the name of company was struck off the Register as the Registrar of Companies u/s 560(3) of the Companies Act, 1956. It was, therefore, contended by the learned Counsel that the litigant should not be punished and should not suffer for the negligence on the part of the Counsel. The learned Counsel relied heavily on the Division Bench judgment of this Court reported in 1985(1) CHN 375 Tusnial Trading Company v. Himangshu Kumar Roy and Ors. Relying on the same the learned Counsel pointed out that the facts were identical in the reported decision inasmuch as the plaintiff therein had failed to take step for issuance of writ of summons and lodging the same with the Sheriffs Department for service upon the respondent required by Rules 6 and 7 of Chapter VIII of the Original Side Rules. He pointed out that the defendant there filed an application for dismissal of the same suit for non-prosecution and there was gross delay on the part of the plaintiff and though the Court endorsed that there was a gross delay and negligence on the part of the plaintiff and/or the Advocate-on-record, the Division Bench ultimately held that no fault could be found with the litigant and the litigant should not be allowed to suffer. The learned Counsel, therefore, appealed to us that a technical view should not be taken on the matter, as the dismissal of the suit as ordered by the learned Judge would completely obliterate the chances of the plaintiff for getting back his property. In addition to this, the learned Counsel contended that the learned Single Judge had not noted that an application was already filed, the copy of which was annexed with the affidavit-in-opposition. According to the learned Counsel, this was a very vital error on the part of the learned Single Judge. In this behalf, our attention was invited to the observations made by the learned Judge that the suit filed in 1983 was not proceeded with any amount of diligence worth the name. The learned Counsel further pointed out that the application for direction for issuance of writ of summons to the defendants was made and further prayer was also made suggesting the extension for returnable date of writ of summons by the plaintiff.

7. As against this, the learned Counsel for the respondent defendant urged that it would be futile now to interfere as admittedly the plaintiff appellant remained dormant for a quite long period of more than 22 years. The learned Counsel was to

point out that Mr. A.N. Dawn was very much alive till recently and as such, it could not be conceived that the plaintiff did not have any knowledge. The learned Counsel points out that the plaintiff was vociferously pursuing the Civil Suit No. 133 of 1977 although and could not be expected to be oblivious regarding his own suit No. 1 of 1983 which was filed precisely to challenge the various orders passed in Suit No. 133 of 1977. The learned Counsel further pointed out that even after the application for dismissal of the suit was filed, the plaintiff did nothing by way of seeking the extension of time to serve the writ of summons which showed the extreme apathy on the part of the plaintiff. Regarding the reported decision, the learned Counsel pointed out that the case turned up differently on the facts and that the delay in the reported case was only about three and half years as compared to the delay of 22 years in the present case. It was further pointed out that in the reported decision, the plaintiff was an individual and a "layman" whereas in the present case the plaintiff is a company having all the infrastructure and as such, it could not call itself to be a "layman" and sit tight over the matter for about 22 years. Lastly, the learned Counsel urged that the company did not any more exist as its name was struck off from the Register of Companies by the Registrar u/s 560(3) of the Companies Act and, therefore, it could not continue with the suit. On these rival pleadings, we have to see as to whether the learned Single Judge was right in dismissing the suit for non-prosecution.

8. In his judgment, the learned Single Judge has relied on Order 9 Rule 5 to hold that under that provision a suit has to be dismissed when a writ of summons has been returned unserved and the plaintiff has within a month thereafter failed to apply for issue of fresh summons. In our opinion, the provision under Order 9 Rule 5 would not be apposite because here it is contemplated that a proper summons was issued by the plaintiff and the same remained unserved and was returned as such to the Court. The reliance of learned Judge on that provision cannot, therefore, be of any avail to the plaintiff. However, that would not by itself change the position because under Order 9 Rule 2, there is a clear provision that if the summons is not served upon the defendant, in consequence of the failure of the plaintiff to pay Court-fee or postal charges, if any, chargeable for such service or to present copies of the plaint or concise statements, as required by Order 7 Rule 9, Court may make order that the suit be dismissed. The thrust, therefore, is on the inaction on the part of the plaintiff and it is clear that while after filing the suit the plaintiff remains inactive, by not making the payment of Court-fee or postal charges chargeable for such service or fails to present copies of the plaint or concise statements, then the Court would be justified in dismissing the suit. When we see the provision of Order 7 Rule 9 Sub-rule (1A), it becomes clear that the plaintiff has to supply the copies of the plaint and the draft forms of summons and fees for the service thereof. It is clear in this case that in the present suit nothing of the sort was done. However, we have to also take into consideration the Original Side Rules as this was a suit filed on the Original Side of this High Court. Under Rule 2A of Chapter VIII, the plaintiff or his Advocate

has to obtain printed forms of the writ of summons on payment of certain fees. He has also to supply along with the plaint sufficient number of copies of such forms to provide for one original writ of summons and two copies for service on each defendant. The rule provides the further details to be mentioned in such writ of summons. Rule 2B suggests that writ of summons in forms 2 and 3 should be annexed with the copy of the plaint and of every document sued on which documents are filed along with the plaint. Rule 6 specifically provides that the writ of summons shall be taken out and delivered to the Sheriff for service within the local limits of jurisdiction of this Court or for transmission elsewhere. The rule ends with the following words:

Unless an extension of time is obtained, it shall be taken out and delivered to the Sheriff within 14 days from the filing of the plaint or the date of the order of amendment.

Under Rule 7, it is specifically provided that unless otherwise ordered, no summons shall be received by the Sheriff for service on transmission up to the expiration of the days mentioned in Rules 6 and 9.

9. It is an admitted position that in this case the plaintiff did not comply with Rule 6 at all by taking out the writ of summons and delivering it to the Sheriff within the time of 14 days indicated by the rule or thereafter. In fact, when the application for dismissal of the suit was made, even then there was no effort on the part of the plaintiff to get the time extended for service for taking out the writ of summons and delivering the same to the Sheriff. It is held in a reported decision in Electrical Industries Corporation Vs. Punjab National Bank and Others, , that in the absence of a specific provision to the contrary, the CPC provisions indluding Order 9 Rule 5 CPC applies to the Original Side. We have, therefore, no hesitation to hold that the provision under Order 9 Rule 2 would also apply in the present situation. The learned Judge has also relied on Rule 35 of Chapter X and has observed that a suit should be dismissed if it has not appeared in the prospective or warning or peremptory list within six months from the date of institution. In our opinion, the law is stated in a slightly wide manner because that rule provides that such suit which does not appear in the prospective list, warning list or the peremptory list within six months from the date of institution may be placed before a Judge in Chambers to be dismissed for default unless good cause is shown to the contrary. The observation that such suit shall be dismissed is not, in our opinion, the exact legal consequence as has been stated by the learned Judge. However, this also cannot help the plaintiff becuase there was nothing brought before the learned Judge or even before us to suggest that the suit was placed for being entered in the General Cause list. It seems that after the suit was filed in the year 1983, absolutely nothing was done. The learned Counsel Mr. Bachawat, however, invited our attention to an application dated 25.04.1984, the affidavit in support of which is sworn by one Ganga Prosad Roy, the Director and Principal Officer of the plaintiff

company. We have already made the reference to this application while summarizing the contention raised by Mr. Bachawat The learned Counsel very earnestly asked that if the application was already made then the suit ought to have been placed before the Chamber Judge or at least some orders were bound to be passed on this application. The learned Counsel also urged that the learned Single Judge has not noticed this application at all. It is, therefore, that we are considering this application now.

10. In this application, it is pointed out by the plaintiff that the suit was presented before Justice D.K. Sen on 10th January, 1983 with a prayer to grant leave to pay in deficit Court-fees stamp on the plaint within one week from the date and thereafter, such additional Court-fees stamp were duly put in. It is then reiterated in paragraph 4 that on the same date an application for interim order was also moved and during the hearing, a talk of settlement was going on between the parties for settlement of the entire suit. It is then pointed out in paragraph 5 that since the pliantiff was under the impression that the matter was likely to be settled out of Court, the plaintiff took no further steps to proceed with the said application on the bona fide belief that the matter was being settled. It is then reiterated that it appeared to the plaintiff that the defendants are not serious about settlement of the matter and then comes para 7 which is as under:

Your petitioner states that in the circumstances as aforesaid, your petitioner did not take any steps or taking out the writ of summons and lodging the same with the Sheriff of Calcutta for service upon the defendants.

11. It is therefore clear that though the application for interim orders was moved on 10th January, 1983, the plaintiff, for the first time, on 25th day of April, 1984 moved the Court for issuance of writ of summons and that, in the meantime, he did not take any steps for taking out the writ of summons and lodging the same with the Sheriff of Calcutta. When we put this application specifically to the learned Counsel for the defendant respondent, he specifically refused to have received the copy of this application. The learned Counsel appearing for the appellant plaintiff was also unable to state as to whether this application was served on the opponent and further whether it was actually filed in the Court or not. He was also not able to give us the date on which it was filed before the Court. When we see the affidavit-in-opposition and more particularly para 7 thereof, it is clear that no date of filing of such application is mentioned therein. The bald statements are made as under:

I say that I was told by the then Advocate-on-record, Mr. A.N. Dawn, that an application is required to be made in the aforesaid suit for necessary order for service of writ of summons upon the defendants and for that purpose a petition was also made which was affirmed by me and I was then told by Advocate that the same was moved before the Id. Master and necessary orders have been obtained for serving writ of summons upon the defendants. The xerox copy of the petition as

made for service of writ of summons by Sri A.N. Dawn, Advocate is annexed hereto and marked with letter "A". I further say that I paid all necessary charges, fees and costs for doing the needful for service of the writ of summons upon the defendant for which I was told that necessary steps would be taken by the Advocate in that regard. I further say that as a layman whatever I can do and/or I am to do I have done and I say that the procedural steps and for other works which I cannot do I have to rely upon my Advocate and I was always given to understand that my matter is properly taken care of and I believe the same to be correct and I had no reason to disbelieve my Advocate. After the death of Mr. A.N. Dawn it took me considerable time to collect papers and other documents with regard to the above suit from his office, though till date I have not been able to collect the entire papers, and thereafter I visited a few Advocates in the matter and ultimately I handed over this suit to Usha Doshi, Advocate and I was informed by her that this suit is appearing before His Lordship the Hon''ble Justice Girish Chandra Gupta in the daily cause list.

12. We have deliberately quoted the affidavit as the contention of the learned Counsel was that the petitioner plaintiff had done everything and had instructed his Counsel and that he was also told by his Counsel that the application made by him. probably in April, 1984, was moved before the Master and the necessary orders were also obtained for serving the writ of summons upon the defendants. Now, firstly it must be noted that all the statements made in paragraph 7 are completely vague. The affidavit does not give any dates as to when the alleged talk took place or the place where the talk took place. We do not have anything to suggest that the deponent who was a Director of the petitioner plantiff had actually instructed his Advocate-on-record. It is also not clear as to when and in what manner, the instructions were given and we do not have the details of such instructions also. Something could have been produced before the learned Single Judge or even before us to support the said assurance given by late Mr. Dawn to the deponent. Very strangely the deponent claims to be a "layman" and further claims that he did not know the exact procedural steps to be taken to continue the suit and therefore, he went on by the assurance given by late Mr. Dawn that the necessary steps were already taken for issuance of writ of summons for which an order of the Court was also obtained. In the first place, though the affidavit is by a deponent, it cannot be forgotten that the plaintiff is a registered company. At the relevant time, it was running a factory and where 400 workers were employed. It cannot be imagined that the company did not have an office or any department for looking after the legal matters. The plaintiff company was already engaged in Suit No. 133 of 1977 and was contesting that suit vociferously. A plea is raised before us that a representation is made by Mr. Dawn to the deponent of this affidavit and on that basis, the deponent was a Director of a company and also the plaintiff company kept quiet for a long period of 24 years. It transpired during the debate that Mr. Dawn maintained a full-fledged office and had died recently in the year after 2000. That

was not contested by Mr. Bachawat also. We fail to follow, therefore, as to how the details or the materials suggesting that the petitioner was prosecuting the suit were not kept either before the Single Judge or even before us. The learned Counsel could not even give any details regarding this alleged application being drafted or being presented or regarding any correspondence between the plaintiff and his Counsel regarding its prosecution. The bald statement that the Advocate ''told'' the deponent about the application having been made and the order having been passed thereupon without any details or without any supporting documents fails to convince us. This is apart from the fact that the learned Counsel for the appellant was also not sure as to whether this application was ever served upon the defendants or not. We are constrained to say that it is not proved before us that such application dated 25.04.1983 was in reality made, filed or prosecuted. We are further constrained to say that the plea raised by the plaimiff appellant in his affidavit-in-opposition are extremely bald, vague and without any substance.

13. Heavy reliance was placed on the decision of this Court in Tusnial Trading Company v. Himangshu Kumar Roy and Ors. (supra). The learned Counsel states that the Division Bench of this Court has held that negligence on the part of the Counsel cannot penalize a party or the litigant. There can be no difficulty about this principle which has been stated by the Supreme Court also in number of decisions. However, present is not a case where it is proved that the Counsel was negligent. In the reported decision, there is a clear cut finding given by the Court that the clerk for a particular law firm had failed to get the summous issued and the matter had totally escaped" his attention due to lapse of time and that the Advocate-on-record came to know of this for the first time only form the service of the notice of motion of the application for dismissal of the suit. In the present case, there is nothing on record to suggest that there was any negligence on the part of late Mr. A.N. Dawn or his staff as only a bald statement is made that he had represented to the plaintiff that he had taken the necessary steps. We have already pointed out that the plaintiff is a company and it is an unthinkable that after filing suit, the deponent or his staff would keep quiet for more than 20 years without even inquiring into the matter as to what had happened to the suit. The facts in the reported decision reveal that there was a delay of only three and a half years in comparison to the inaction of more than 20 years on the part of the plaintiff here. We have already given our finding that besides making the bald statement that Mr. Dawn had assured that all the steps were taken, nothing else was brought on record either before the Trial Judge or before us. We are, therefore, not prepared to hold that there was any negligence on the part of late Sri A.N. Dawn or that the plaintiff had proved that Sri Dawn was negligent. The reported decision in reality turns on the finding of negligence and the plaintiff being not at all guilty, he having taken all necessary steps to prosecute the suit. Such is certainly not the case here. Here both these factors—negligence of the Counsel and the plaintiff not being guilty of inaction, are absent. We are also not prepared to hold that the plaintiff was an innocent or "lay"

party not, conversant with the Court procedures. We have already pointed out that with the same parties, a suit was already going on. The orders passed in that suit were adverse to the plaintiff. Those orders were confirmed even by the Supreme Court and by the instant suit, the plaintiff had prayed for setting aside those very orders which were earlier confirmed by the Supreme Court. Under such circumstances, it cannot be imagined that the plaintiff company was a ''lay person'' who was entitled to rely solely on its lawyer and remain quiet for more than 20 years. We are, therefore, of the opinion that the reported decision would not help the plaintiff.

14. The matters do not stop here. In their application for dismissal of the suit, the respondent specifically pleaded in paragraph 2A that the plaintiff company did not any more exist since it was dissolved. It is further contended that the plaintiff company has been struck off from the Register by the Registrar of Companies. Eastern Region, u/s 560 of the Companies Act, 1956 and as such, the company stood dissolved. It is further reiterated that one Ashok Kumar Daga had taken inspection of the relevant records and learned about the fact of dissolution. Along with the application, the affidavit of Sri Ashok Kumar Daga also appears to have been filed. In his affidavit, Sri Ashok Kumar Daga contended that he was a practising Company Secretary for seven years and was acquainted with all types of company matters inclusive of causing searches before the Registrar of Companies and on the instructions of Bose & Mitra, Solicitors and Advocates, he had caused searches concerning the company by the name of The East Bengal River Steam Services Limited and/or East Bengal River Steam Services Ltd. having its registered office at 87, Sovabazar Street. Calcutta and that such search was done on 1st February, 2005. The affidavit then proceeded on say that he could not trace out the existence of the company by its name. In reply to this, the plaintiff has made an extremely vague and evasive statement. It is stated:

I state that so far as I have made caused search in the Gazette published by the Registrar of Companies I have not found the name of the plaintiff as appearing in the list as defunct company, in the premises u/s 560 of the Companies Act, 1956 the plaintiff company has not been declared as defunct company and more so because record not found in the Register of the Registrar of Companies does not make a company non-existing.

15. This is a typical example of vague reply. The deponent could well have brought on record in details of any searches made by him regarding the date etc. It could have also been stated as to which Gazettes published by the Registrar of Companies were searched and when. At least there could have been a specific assertion regarding the company''s current activities to suggest that it is doing business. Section 560 of the Companies Act suggests that when the Registrar has reasonable cause to believe that the company is not carrying on business, he shall send to the company by post a letter inquiring whether the company is carrying on business. By

Sub-section (2) it is provided that if that Registrar does not get the answer to the letter within 14 days, then a registered letter would be sent by him and if there is no answer even to the second letter issued, a notice would be published in the Official Gazette with a view to striking the name of the company off the Register. Sub-section (3) provides that on the failure by the company to take any action on this, the Registrar may publish in the Official Gazette and send to the company by a registered post, a notice that the name of the company would be struck off the Register if the company fails to take any action within three months. In the wake of assertion from the respondent that the name of the company was not to be found in the Register, much more could have been stated by the plaintiff pointing out that the company still existed after the assertion was made by a practising Company Secretary who had taken a complete inspection of the Register. A bald and evasive denial of the kind, in our opinion, cannot be of any help to the plaintiff and therefore, if the company was struck off the Register, there would be no question of prosecuting the suit by itself. However, we need not go into this, particularly, because the learned Single Judge has not dismissed the suit on that ground. All the same we deem this to be a relevant circumstance in the peculiar facts of this case. This is apart from the earlier finding that we have given that the plaintiff had shown total negligence in prosecuting the suit and had wrongly attributed negligence to his deceased lawyer who could not have come before us to explain his side.

16. The learned Counsel asserted before us that by allowing the suit to be dismissed we would be taking a highly technical view of the matter and in the process injustice will be caused to the plaintiff as he would be deprived of an opportunity to take any further step in the matter. The learned Counsel urged that procedural technicality should not be allowed to take precedence over justice. We are quite a ware that we are acting under civil law. However, in our opinion, merely because it is a civil litigation a party cannot be allowed to remain in the state of hibernation for a period of 24 years. We will have to take into account the high pendency of the suit for innumerable years and realize that some day a step even if it means to be a harsh step would have to be taken in such matters to combat the high pendency for long number of years.

17. We are therefore, of the opinion that the learned Single Judge was right in dismissing the suit of the plaintiff. We accordingly confirm the judgment and dismiss this appeal without any order as to costs.

18. All parties to act on the xerox certified copy of this judgment on the usual undertakings.

Asok Kumar Ganguly, J.

I agree.