
(2011) 08 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition No. 2808 of 2011

All India Engineering Company Ltd.

APPELLANT

Vs

Tripa Sales Organization

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 1 ALLMR 78 : (2012) 1 BomCR 912 : (2011) 5 MhLj 952

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : N.A. Jachak, for the Appellant; P.P. Pancholi, for the Respondent

Judgement

R.M. Savant, J.—Rule, with the consent of the parties, made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the orders dated 11/3/2011 passed by the 4th Joint Civil Judge (Sr. Dn.), Nagpur, by which order the application, Exh.11 for setting of "No W.S. and permission to file the Written Statement" order came to be rejected.

3. It is suffice to be noted that the "No W.S." order was passed on 16/6/2010 prior to the statutory period mentioned in Order 8 Rule 1 of the CPC coming to an end. The application filed by the Petitioner for setting aside the said "No W.S. Order" came to be rejected by the impugned order dated 11/3/2011. The reasons why the written statement could not be filed have been mentioned by the Petitioner herein in its application. In so far as the time mentioned in Order 8 Rule 1 of CPC is concerned, it is well settled that for just reasons the time can be extended by the court. In the instant case, the suit summons, as can be seen, has been served on the Defendants on 23/3/2010. As indicted above, the reasons why the written statement could not have been filed have been mentioned in the application. The sum and substance of the reasons is that the Managing Director of the Defendant Company was out of station and hence

written statement could not be finalized. In my view, in rejecting the said application the Trial Court has adopted a hyper technical approach. It is well settled that procedure is the hand maiden of justice and cannot be used for oppression of justice. In that view of the matter, order dated 11/3/2011 passed by the learned Civil Judge (Sr. Dn.), Nagpur is required to be quashed and set aside and is accordingly quashed and set aside. Resultantly, application, Exh.11 is allowed. The Petitioner herein would be resultantly allowed to file its Written Statement. The Trial Court is directed to take the written statement on record. The interest of justice would also be served if the Petitioner is directed to pay costs of Rs. 3000/- to the Respondent to be paid within a period of two weeks from date.

4. Rule is accordingly made absolute, with parties to bear their respective costs.