

(2021) 12 BOM CK 0139

In the Bombay High Court

Case No : Writ Petition No.6191 Of 2021

Babasaheb Raosaheb Kobarne & Anr

APPELLANT

Vs

Pyrotek India Private Limited & Ors

RESPONDENT

Date of Decision : 13-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 141, 142
Code Of Civil Procedure, 1908 — Order 8 Rule 1
Companies Act, 2013 — Section 4, 421

Citation : (2021) 12 BOM CK 0139

Hon'ble Judges : Bharati Dangre, J

Bench : Single Bench

Advocate : Shailendra S. Kanetkar, Abhishek Khare, Sanat Ragde

Final Decision : Dismissed

Judgement

Bharati Dangre, J

1. Rule. Rule made returnable forthwith. Heard by consent of parties.
2. The plaintiff, Pyrotek India Private Limited, instituted a Commercial Suit No.01 of 2020, seeking an injunction and restraint order against the defendants from using, divulging, distributing, publishing, revealing or dealing with the proprietary information and trade secrets of the plaintiff and a declaration that the defendants are not entitled to use the information and trade secrets of the plaintiff. In the said suit, the present petitioners are impleaded as defendant Nos. 1 and
3. The defendants received summons on 10/01/2020 and it was imperative for them to file the written statement within 30 days. On 14/01/2020, by putting their appearance, they sought time to file the written statement and they were granted time to do so on or before 11/02/2020. The time to file the written statement was extended, on an application filed by the defendants, till 11/03/2020. Since some documents were not available to the defendants, more

time was sought for filing the written statement and the application was allowed, thereby the time to file the written statement was extended upto 24/03/2020.

4. The contention of the defendants is, in the month of March, on the outbreak of the Covid pandemic, the Courts restricted its timing and specifically the Courts in Pune functioned for limited hours and from 25/03/2020, the lockdown was declared in the entire country and all the Courts practically shut and continued to function only for extremely urgent matters. In the wake of this, it was not possible for the defendants to file the written statement and though the period of 120 days expired on 09/05/2020, the written statement could not be brought on record. On 02/07/2020, an application vide Eth.97 came to be filed, seeking permission to bring the written statement on record, which was opposed by the plaintiff on the ground of delay. The learned District Judge (Commercial Division), Pune, on hearing the rival parties, rejected the application on 28/01/2021 and ordered that the matter shall proceed without written statement of defendant Nos.1 and 6.

5. Heard learned counsel Mr.Shailendra Kanetkar for the petitioners and learned counsel Mr.Abhishek Khare for the respondents.

The facts being not in dispute, I will deal with the core issue which arise for consideration in the present writ petition; whether the period of limitation for filing of written statement, as contemplated under Order 8 Rule 1 of the CPC got automatically extended, since it is expired during the period of lockdown and to be precise on 09/05/2020.

The submission of the learned counsel Mr.Kanetkar, by referring to the chronology of events is, in the wake of the pandemic the Hon'ble Supreme Court, in *Suo Motu Writ Petition No.3 of 2020*, has extended the limitation in all proceedings irrespective of limitation prescribed under the general law or special laws w.e.f. 15/03/2020 till further orders. The said order came to be passed by the Apex Court in this country, to ameliorate the situation faced by the litigants and the advocates and the order dated 23/03/2020 in *Cognizance for Extension of Limitation, In re(2020) 19 SCC 10*, recorded the following binding directions.

"1. This Court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State).

2. To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective courts/tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15-3-2020 till further order(s) to be passed by this Court in present proceedings.

3. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all courts/tribunals and authorities.

4. This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/tribunals within their respective jurisdiction.

5. Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

6. By placing reliance on the aforesaid by which period of limitation in the proceedings came to be extended to deal with an extra ordinary situation, Mr.Kanetkar submits that the period for filing of written statement can be extended upto 120 days from the date of service of summons and, thereafter, on failure to file the written statement, the right of defendants stand forfeited. The submission advanced is, the statutory period of 30 days for filing the written statement, is permitted to be extended at the discretion of the Court, on sufficient cause being shown, and the written statement can be permitted to be filed within a period of 120 days. The learned counsel would submit that on expiry of the period of 30 days for filing of the written statement, the learned Judge at his discretion, has extended it from time to time and by the order passed on 11/03/2020, it came to be extended till 23/04/2020.

It is submitted that it was practically impossible to file the written statement on the said date, since there was a complete shut down of the functioning of the Courts as well as on account of the lockdown being imposed, the movement of the Advocates, litigants and their access to the Court was restricted. The period of 120 days, in any case, was available for filing of the written statement and the said period expired on 09/05/2020, but since the scenario continued to remain in force, on 02/07/2020, under an assumption that in view of the order passed by the Hon'ble Supreme Court, if the limitation was to expire any time after 15/03/2020, it came to be extended, thereby the limitation for filing of the written statement of the defendants also stand extended, it was prayed that the written statement be taken on record, construing it to be filed within limitation.

7. Per contra, the learned counsel Mr.Khare appearing for the original plaintiff, would submit that the defendants ought to have file their written statement within 120 days from the date of receipt of summons and, since, there is a failure to abide by the said period, their right to file the written statement stand forfeited. Reliance is placed on the decision of the Hon'ble Supreme Court in case of M/s. SCG Contracts India Pvt. Ltd. Vs. K.S.Chamankar Infrastructure Pvt. Ltd. & Ors. (2019) 12 SCC 210 where it has been categorically ruled that the consequences of non-filing of the written statement within the time prescribed, are mandatory and, particularly, in commercial suits, the written statement filed by the defendant cannot be permitted to be taken on record, on expiry of 120 days from the date of service of writ of summons.

8. The learned counsel Mr.Khare would place reliance on the decision of the Hon'ble Supreme Court in case of Sagufa Ahmed & Ors. Vs. Upper Assam Polywood Products Private Limited and Ors. (2021) 2 SCC 317 , which according to the learned counsel, has clarified the directions issued on 23/03/2020 In re, by elucidating that it was only 'period of limitation' which was extended and not the period upto which the period can be condoned'. Relying upon the aforesaid position of law, emerging from the said decision, Mr.Khare would submit that the Calcutta High Court in Siddha Real Estate Development Private Limited Vs. Golden Goenka Credit Private Limited GA No. 2 of 20 decided on 24/12/2020 as well as the Delhi High Court in Union of India Vs. Rama Contractor 2021 SCC OnLine Del 4350 have construed the directions issued by the Hon'ble Supreme Court In re and the delay was refused to be condoned, since the discretionary period, expired within the period of lockdown.

9. Order VIII of the CPC is a provision which provides for the filing of the written statement and in its amended version, it reads thus :-

"ORDER VIII

Written Statement, Set-Off and Counter-Claim

1. Written statement. - The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence :

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other days, as maybe specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

In its application to the commercial suit, the proviso stand substituted and reads thus :

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."

10. It is not in dispute that the suit being a commercial suit, the period to file the written statement expired on 09/05/2020, but the initial period of 30 days which defendant Nos.1 and 6 were entitled to avail, expired on 10/02/2020. The discretion being exercised thereafter by the learned Judge, the time was extended by from time to time and the last extension was granted upto 24/03/2020. The question that arises for consideration is, whether the defendants are entitled to take the benefit of the order passed by the Hon'ble Supreme Court In re, which extended the period of limitation from 15/03/2020 where it was ordered that the

period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15-3-2020 till further order(s) to be passed by the Court. The written statement came to be filed by the defendants on 02/07/2020.

11. A Similar argument was advanced before the Hon'ble Supreme Court in case of Sagufa Ahmed (supra) qua the limitation for filing of an Appeal before the National Company Law Appellate Tribunal, on dismissal of the proceedings by the NCLT on 04/08/2020, Section 421 of the Companies Act, 2013 which provide an Appeal to the Tribunal, which shall be filed within a period of 45 days, from the date on which a copy of the order of Tribunal is made available. The proviso, however, permit the Tribunal to entertain an Appeal after expiry of the said period of 45 days, but within a further period not exceeding 45 days, on being satisfied that the appellant was prevented by sufficient cause from filing the Appeal within that period. In the said case, period of 45 days was over on 02/02/2020 and the extended period, which was the discretionary period, also expired on 18/03/2020, before which the Appeal was not filed, but the Appeal came to be filed only on 28/07/2020. Recording that the lockdown was imposed on 24/03/2020 and there was no impediment for the appellant to file the Appeal on or before 18/03/2020, their Lordships of the Apex Court, after referring to its directions in recognition, clarified as under :-

"17. But we do not think that the appellants can take refuge under the above order in recognition for Extension of Limitation in re [(2020) 19 SCC 10]. What was extended by the above order of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute.

The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is *vigilantibus et non dormientibus jura subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them."

By referring to the "prescribed period" appearing in Section 4, it was held that it cannot be construed to mean anything other than the 'period of limitation'. Any period beyond the prescribed period during which the Court or Tribunal has discretion to allow a person to institute the proceedings cannot be taken to be the prescribed period. It was, therefore, held that the appellants cannot claim the benefit of the order passed by the Court on 23/03/2020 for enlarging, even the period upto which the delay can be condoned. Accordingly, Appeal came to be dismissed.

12. A learned Single Judge of the Calcutta High Court in Siddha Real Estate Development Pvt. Ltd. (supra) (Hon'ble Justice Moushumi Bhattacharya), while

dealing with a suit fled under a commercial division, by following the dictum flowing from Sagufa Ahmed (supra), has observed as under :-

"The other issue is whether the defendant showed promptness in pursuing its right of filing the written statement. The prescribed period of 30 days ended on 2nd January, 2020 and the additional 90 days (120 days under the Amendment) ended on 31st March, 2020. The application was fled by the defendant for extension of time on 5th February, 2020 seeking a further period of eight weeks for filing of its written statement thereby extending the time till 5th April, 2020. The prayer made therefore is clearly outside even the additional period of 90 days as prescribed by the Amendment. It should also be noted that paragraph 16 of the application fled by the defendant states that judicial functions and listing of urgent matters started in phases on and from June, 2020 and matters taken up in the regular course in this Court resumed only on and from 7th December, 2020. This is clearly an incorrect statement since The High Court at Calcutta commenced its judicial business intermittently from April, 2020 and in right earnest from June, 2020 which continues as on date. The defendant therefore cannot take recourse to this ground at all."

The same course is followed by the Delhi High Court in Union of India (supra), relying upon the decision of the Hon'ble Supreme Court .

13. In the wake of the clarification issued by the Hon'ble Supreme Court in Sagufa Ahmed (supra), I do not think that any other option is available to me in the facts of the given case. The statutory period of limitation within which the written statement could be fled in the present case came to be extended by the discretionary power of the Court and even the period of 120 days expired on 09/05/2020 and when the lockdown came to be imposed, 'period of limitation' having already expired, the benefit of the order of the Hon'ble Supreme Court cannot be extended to the defendants. The learned Judge has committed no error in refusing to accept the written statement on record, holding that the defendants have forfeited their right to file the written statement, on expiry of period of 120 days.

Finding no legal infirmity in the impugned order, the same is upheld. Resultantly, Rule is discharged, the writ petition is dismissed.