

(2004) 03 BOM CK 0076

In the Bombay High Court

Case No : Chamber Summons No. 243 of 2004 in Summary Suit No. 1986 of 2002

Bank of Rajasthan Ltd.

APPELLANT

Vs

Andhra Bank and Others

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3(6), Order 37 Rule 7, 148

Citation : (2005) 2 BC 192 : (2004) 4 BomCR 891 : (2004) 3 MhLj 541 : (2004) 3 MhLj 540

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Sowjanya Menon, instructed by Paras Kuhad Associates, for the Appellant; Saluja, instructed by M.V. Kini and Co. for defendant No. 1, for the Respondent

Judgement

Anoop V. Mohta, J.—The plaintiffs have filed the summary suit for recovery of money.

2. By this chamber summons, a prayer is sought by defendant No. 1 to condone the delay, to deposit a sum of Rs. 6 Lakhs as ordered, in Summons for Judgment No. 702 of 2002. The operative part of the order dated 27-11-2003 is as follows :

"2. It is the contention of the defendant No. 1 that there has been a collusion between the plaintiff and the defendant No. 3 and the goods were never delivered. Banks deal, not in the actual goods but in the documents relating to the goods. The documents were in order and they were accepted to be proper by the defendant No. 1 bank. In the circumstances, defendant No. 1 has no bona fide or reasonably triable defence. The defendant No. 1 can only be granted conditional leave to defend the suit. Accordingly, the defendant No. 1 is granted conditional leave to defend the suit subject to its depositing in the court a sum of Rs. 6,00,000/- (rounded off figure) within a period of six weeks. On such amount being deposited, the suit shall stand transferred to the list of commercial causes.

Defendant No. 1 shall file written statement within eight weeks. On failure to deposit the money, the plaintiff shall have the liberty to apply.

3. On deposit of the money, the plaintiff shall have the liberty to withdraw the money by furnishing a bank guarantee of a nationalised bank."

3. By an affidavit in reply, the plaintiffs have opposed the said application for the condonation of delay. The case in the affidavit of reply is that, in view of Rule 3(6) and 3(7) of Order XXXVII of the CPC there is no provision and power to condone the delay and to extend the time for making the deposit, as prayed by defendant No. 1. No case is made out for condonation of delay. It is also contended that there is delay of more than 21 days and in fact it is more than 31 days, as the affidavit in support of Chamber summons was affirmed on 29-1-2004 but the Chamber summons has been taken out only as late as on 9-2-2004. Therefore, even assuming that the Section 148 of the CPC is applicable, a period fixed or granted by the court cannot be enlarged for a period, not exceeding 30 days in total.

4. The Rule 3(6) and 3(7) of Order XXXVII are reproduced as under :--

"Order 37, Rule 3(6) At the hearing of such summons for judgment--

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

Order 37, Rule 3(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit."

Section 148 of CPC (as amended with effect from 1-7-2002) is also reproduced.

"148. Enlargement of time.-- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, (not exceeding thirty days in total,) even though the period originally fixed or granted may have expired."

One more provision can be noted is Order XXXVII, Rule 7, which is also reproduced as under :

"Order 37, Rule 7. Procedure in suits. -- Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner,"

5. It is clear from the amended Section 148 of Civil Procedure Code, as

reproduced above that the words "not exceeding thirty days in total" have been introduced to put the outer limit in respect of an enlargement of time by the Court. This is with a view to minimise the procedural delay at the instance of either party to a suit. The whole object of CPC (Amendment) Act, 1999 is with intention to speed up the suit and it's proceedings. It may be noted that, prior to this amendment, power was available with the Court to enlarge such period even though such period originally fixed or granted or even if it was expired. The present amendment provides maximum limit of 30 days for the enlargement of such period. Whether such enlargement of time is at one time or phased, is immaterial.

6. In the case in hand, affidavit in support of the Chamber summons was affirmed on 29-1-2004 and as contended, the Chamber summons has been taken out on 9-2-2004. So far as the contentions based on Rule 3(6) and (7) of Order XXXVII are concerned, it has to be dealt with in reference to Order XXXVII, Rule 7 also. It means as per scheme of CPC and of Limitation Act. In view of Section 148 of the Civil Procedure Code, the Court has power to grant extension of time.

7. In the present case, there is no dispute that there was delay in depositing the money as directed. The question is whether such a delay can be condoned in view of the amended provisions of Civil Procedure Code. Whether the amended section is mandatory or directory is a matter which requires scrutiny along with other provisions of the Civil Procedure Code. There is no doubt that the purpose of the amendment is to see that the extension of time should not be granted mere for asking. Discretion should be exercised to subserve the purpose of justice. It is settled law that CPC is a procedural law. The restriction imposed by amended Section 148 of thirty day's has to be respected. But right of the parties cannot be destroyed. The purpose of adjudication in Court is to deliver justice. Early fruit of litigation must be accepted. Here one party is ready to deposit money. Other party cannot still insist for decree on record.

8. The defendant No. 1, in view of order dated 27-11-2003 as directed should have deposited the money by 8th January, 2004 i.e. within 6 weeks from the date of the Order. Affidavit in support of the chamber summons was affirmed as on dated 29-1-2004. There is no doubt that the chamber summons in fact was taken out after 30 days as referred above. There is delay in following procedure to take out summons within time. However, the fact that the defendant No. 1 is ready to deposit money, then, this will be in the interest of justice that the plaintiffs get the money instead of a decree in question.

9. Defendant No. 1, being a bank, after following internal procedure of sanction and permission, has taken out this chamber summons with intention to deposit the amount. Therefore, this procedural mandate cannot prevail over the substantial justice. In my view, it will be in the interest of both the parties that the defendant No. 1 should deposit the money and the plaintiffs have the liberty to withdraw the money, as directed by the Court.

10. Therefore, in this circumstances, I am of the view that this period can be extended and delay in depositing the said amount can be condoned, basically in view of the fact that Mr. Saluja, the learned advocate for defendant No. 1 is ready to deposit the money during the course of the day itself. The delay in depositing the amount is accordingly condoned. The defendant No. 1 is permitted to deposit the amount in the office of the Court today itself.

11. The chamber summons is made absolute in terms of prayer Clause (a). Prayer Clause (a) is reproduced.

"(a) That the time to deposit the sum of Rs. 6 Lakhs as ordered vide Order dated 27-11-2003 in Summons for Judgment No. 702 of 2002 may be extended for a further period of one week and delay of about 21 days in depositing the sum of Rs. 6 Lakhs as directed thereunder may be pleased be condoned."

In view of the order dated 27-11-2003, the plaintiff is entitled to withdraw the money by furnishing bank guarantee of a Nationalised bank as already directed. However, the defendant No. 1 shall pay cost of Rs. 2000/- to plaintiffs, within two weeks from the date of the order.

Ordinary copy of the order duly authenticated by Court Associate is allowed.