
(2005) 03 DEL CK 0103
In the Delhi High Court
Case No : FAO (OS) No. 272 of 2004

D.D.A. and Another

APPELLANT

Vs

K.R. Builders P. Ltd.

RESPONDENT

Date of Decision : 01-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, 129
Delhi High Court (Original Side) Rules, 1967 — Rule 3

Citation : (2005) 3 BC 511 : (2005) 119 DLT 196 : (2005) 81 DRJ 708

Hon'ble Judges : B.A. Khan, J;Anil Kumar, J

Bench : Division Bench

Advocate : B.P. Aggarwal, for the Appellant; Raman Kapur, for the Respondent

Final Decision : Allowed

Judgement

B.A. Khan, J.—This appeal raises two interesting questions:-

Whether Rule 3 of Chapter of 6 of Delhi High Court (Original Side Rules), 1967 empowered the Court to extend time for filing a written statement beyond the outer limit of 90 days prescribed under Order VIII Rule 1 of CPC or whether the two provisions could be harmoniously interpreted to hold that even Rule 3 did not permit any extension beyond these 90 days.

2. Appellants are the defendants in a recovery suit No. 2181/2003. It is not known when summons were served on them in the suit but when it was listed before Joint Registrar on 12.5.2004, they were represented by their counsel. The suit was adjourned to 18.8.2004 when they filed the written statement with is No. 6102/2004 seeking extension of time in filing the same which application was dismissed by impugned order dated 29.9.2004 with the learned Trial Judge taking the view that the Court had no power or discretion to extend time for filing the written statement in terms of Order VIII Rule 1 CPC and that in any case if this time was to be extended even under Rule 3 of the Original Side Rules such extension could not go beyond 90 days the time embargo prescribed under

Order VIII Rule 1. The learned Judge also held that even if it was assumed that such a power could be exercised, appellant had failed to furnish any justification or ground to "violate the mandate of law".

3. For proper appreciation of the issues thrown up in the process and the view taken by the learned Judge in the matter, it would be appropriate to reproduce his conclusion:-

The power of the High Court to make Rules is itself derived from an enactment of Parliament, and, Therefore, those Rules which are not in consonance with statutory provisions would not be sustainable where Parliament legislates to the contrary.

4. A Delegatee cannot exercise powers greater than those of the Authority/Body from which it derives its subordinate powers. Be that as it may it is necessary to reiterate that Rule 3 of the Delhi High Court (Original Side) Rules, 1967 envisages that time can be enlarged on more than one occasion; it does not stipulate that this can be done even beyond ninety days. Assuming that this Rule has application post the CPC (Amendment) Act, 2002 it can, along with Order VIII Rule 1, be simultaneously given effect to by imparting the interpretation that the Court may permit several opportunities to file Written Statement provided that this pleading is not permitted to be filed beyond ninety days from the date of service on the concerned Defendant.

5. On the other aspect whether appellants had furnished any justification for extension of time, the learned Judge held:-

Even assuming that this power is retained by the Court, all that has been stated is that the Written Statement could not be prepared because the defendant "had to collate the documents/administrative orders and records which were available either at side or at other offices". This is no justification or ground to violate the mandate of law.

6. Before coming to the brass tacks, it requires to be pointed out at the very outset that there has been conflict of judicial opinion right from the enactment of amended provisions of Order VIII Rule 1 in this Court and elsewhere also on whether the Court possessed any power to extend the time limit beyond ninety days for filing of a written statement under the amended provisions of Order VIII Rule 1 CPC. The courts have pronounced for and against this proposition. In J. Kohli and Another Vs. Mr. Ram Bhagwat and Others, , the learned Trial Judge of this Court has ruled that the court enjoyed the power to extend time under Rule 3 of the Original Side Rules. In contra the author of the impugned judgment, Brother Sen,J. took a diametrically opposite view in *Textstyles and Ors. v. Kiran Overseas* holding that Court had no such power to extend the time for filing a written statement after the expiry of deadline of ninety days.

7. A Division Bench of the Karnataka High Court was faced with a similar situation of conflict of opinions by its Single Benches on the issue. To resolve

these, the Division Bench headed by T.S. Thakur, J, surveyed the whole legal scene in *A. Sathyapal and Ors. v. Smt. Yasmin Bano Ansari* 2004 (4) KLJ 1997 to hold:-

The power of the Court to extend the time for filing of the written statement would however be restricted on a plain reading of the proviso to a total period of 90 days reckoned from the date of service of the summons. The provision does not on a plain and literal understanding of the words employed therein empower the Court to extend time beyond 90 days from the date of service of the summons. The words used by the Parliament for conveying its intention are unambiguous and the only logical interpretation that can be given to the provision read as a whole is that the Court cannot extend time for filing the written statement beyond 90 days from the date of service of the summons upon the defendant..... A Court trying a civil suit does not have any power to extend time for filing the written statement beyond what is stipulated in Order 8, Rule 1 of the Code of Civil Procedure.

8. The issue, however, got a new twist when a Division Bench of the Bombay High Court in *Iridium India Telecom Ltd. Vs. Motorola Inc. and Another*, ruled that the suits on the Original Side of the High Court would be governed by the Original Side Rules and not by the amended provisions of Order VIII Rule 1 CPC. The Bench dismissed the appeal against the order of a Single Judge granting extension of time to defendant in filing the written statement beyond 90 days from the service of summons.

9. The matter eventually landed up before the Hon''ble Supreme Court under the same title *Iridium India Telecom Ltd. Vs. Motorola Inc.*, and the Court interestingly affirmed the view taken by the Division Bench of the Bombay High Court laying down that amended provisions of Order VIII Rule 1 had no application to the suit governed by the original side Rules of the High Court.

10. The case before the Supreme Court was that the powers of the Chartered High Courts to make rules on its original side was itself derived from the Letters Patent and that the non-obstante clause in Section 129 CPC could not be construed as a departure from the entire body of CPC so as to render the rules made by the High Court to regulate its own procedure in exercise of its original civil jurisdiction into "stand-alone body of rules". Secondly, the Original Side Rules of the High Court being a subordinate legislation would be over-ridden by the superior legislation, namely, the substantive provisions of the Civil Procedure Code. The Supreme Court traced the whole history of the legislation on the subject and rejected these contentions.

11. The Court held:-

The face of this body of evidence (reference to the legislative history) it is difficult to exceed to the contention of the appellant that the force of non-obstante clause is merely declaratory and not intended to operate as a declared exception to the general body of CPC.....

The historical development of the law suggests that the non-obstante clause in Section 129 is intended to by-pass the entire body of the Code in so far as ruled made by the Chartered High Courts for regulating the procedure on its original side or concerned.

12. Responding to the plea that Original Side Rules were a delegated legislation and should give way to this superior legislation (in this case Order VIII Rule 1), the Court over-ruled the plea that the Original side Rules were relegated to a subordinate status. These rules the Court observed constituted a special law which was to prevail in the event of a conflict between a special law and a general law. The Supreme Court then affirmed the Bombay High Court judgment which had held that the suits on the original side of the High Court would be governed by the Original Side Rules and not by the amended provisions of Order VIII Rule 1 CPC. The law of the land now is that amended provisions of Order VIII Rule 1 would have no application in suits on the original side of a High Court where Original Side Rules are in force to govern such suits.

13. It is true that the main refrain of the Supreme Court judgment is related to the Original Side Rules of Chartered High Courts. But that makes no difference because the logic applied by the Supreme Court would apply more effectively to the Original Side Rules of this Court also which is not the creation of a Letters Patent but a statute enacted by the Parliament. As such, no fine distinction or any hair-splitting can be made on the plea that this Supreme Court judgment was only limited to the Original Side Rules of the Chartered High Courts and not the Original Side Rules of this Court which also enjoy protection of Section 129 CPC. All this obviates the necessity of pronouncing on the mandatory nature of the provisions of Order VIII Rule 1 and whether the time frame prescribed therein provided a deadline of ninety days on expiry of which the Court would loose power to extend further time.

14. The impugned judgment attempts a harmonious interpretation of the provisions of Rule 3 of the Original Side Rules of this Court and amended provisions of Order VIII Rule 1 CPC to save the situation. This should have given a decent way out and should have been welcome but even this can't be done in the face of the Supreme Court judgment supra. Because once provisions of Order VIII Rule 1 are excluded, the question of reading these in harmony with the provisions of Rule 3 does not arise. This rule acquires a higher pedestal and the question of a grant of extension in time by the Court for filing the written statement would have to be done under this rule only. It can't be, Therefore, said or held as done by the impugned judgment that even under this rule extension could not be granted after the expiry of ninety days from the date of service of summons.

15. Coming to other issue whether appellants had shown any justification or ground for extension of time, it appears on the face of impugned order that learned Trial Judge had given a short shrift to this aspect by merely observing that there was no justification or ground to violate the mandate of law a

reference to the amended provisions of Order VIII Rule 1 which stands excluded by the Supreme Court judgment.

16. The learned Judge had failed to advert to the cause advanced by appellants that they could not prepare the written statement as they had to "collate the documents/administrative records which were available even at site or at other offices" . What was required to be examined was whether this plea constituted a sufficient cause to grant any extension of time which had not been done. The rejection of appellants case on this also can't sustain.

17. We are left with no option in the light of all this and in the face of the judgment of the Hon'ble Supreme Court in Iridium India Telecom case but to hold that the suits filed on the original side of this Court would be governed by these Rules to the exclusion of the provisions of CPC wherever the field is occupied by these Rules and that unless the court would have the power to extend time for filing a written statement even beyond 90 days, which time limitation provided under Order VIII Rule 1 would stand excluded. This, however, still does not give the Court a limitless power to grant unending extensions in time to enable a defendant to drag on the suit for years which would have the consequence of aggravating the situation arising out of defendant's normal tendency to prolong the disposal of the suit. This is also apparent from the intent and purpose of Rule 3 of the Original Side Rules which reads: -

Rule 3-Extension of time for filing written statement

18. Ordinarily more than one extension of time shall be granted to the defendant for filing a written statement provided that second or any further extension may be granted only on an application made in writing setting forth sufficient grounds for such extension and supported, if so, required by an affidavit.

19. This Rule thus provides for one extension of time to be granted to the defendant ordinarily for filing the written statement. The proviso to the Rule provides for a second or any further extension to be granted on an application supported by an affidavit setting forth a sufficient ground. The expression "any further extension" in this proviso does not contemplate unending extensions to be granted on asking. At the same time, it can't be said that it bars a third extension after the second one. This expression, however, in our view, should receive a restricted interpretation for a variety of reasons more particularly to curb phenomenon of delayed disposal of suits.

20. If read and interpreted in this perspective the expression, "further extension" should be construed as the extension to be granted after the second extension but only in exceptional and rare circumstances which are beyond the control of the parties. In other words, any extension after second extension would not be liable to be granted on a mere sufficient cause unless such cause makes out an exceptional and rare circumstances which occur beyond the control of the defendant seeking extension for filing the written statement. This interpretation is based on the purposeful construction of the rule aimed at striking the mischief

that results in by the defendant's strategy to prolong the adjudication of the suit by not filing a written statement within a reasonable time.

21. This appeal accordingly succeeds on the strength of the Supreme Court judgment. The impugned order dated 29.9.2004 passed in is No. 6102/2004 of CS(OS) No. 2181/2003 is set aside. Appellants' is shall revive and shall be considered afresh by the learned Trial Judge under Rule 3 of the Original Side Rules.

22. Nothing said herein shall come in the way of the learned Trial Judge to go into the nature of the cause shown by appellants in their application and to pass an appropriate order in that regard. The evidence, if any, filed or led shall remain on the hold till the fate of the appellants' written statement is decided.