

(2003) 05 DEL CK 0003

In the Delhi High Court

Case No : IA No's. 565 and 1263 of 2003 in Suit No. 1017 of 2002

J. Kohli and Another

APPELLANT

Vs

Mr. Ram Bhagwat and Others

RESPONDENT

Date of Decision : 29-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 8 Rule 1, Order 8 Rule 10, 129

Delhi High Court (Original Side) Rules, 1967 — Rule 3

Citation : (2003) 5 AD 496 : (2003) 105 DLT 275 : (2003) 70 DRJ 407 : (2003) 27 PTC 161

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Trideep Pais and Raj Shekhar Rao, for the Appellant; Sanjay Jain and Anuradha Mukherjee, for the Respondent

Judgement

R.C. Jain, J.—Defendants have moved is No.1263/2003 under Rule 3 Chapter VI of the Delhi High Court (Original Side) Rules, 1967 read with Section 151 of the CPC praying for condensation of delay in filing the written statement while the plaintiffs have moved is No.565/2003 under Order VIII Rule 10 read with Section 151 CPC praying for a judgment and decree in terms of the prayer set out in the suit on the failure of the defendants to file the written statement within the period as prescribed under Order VIII Rule 1 CPC.

2. In brief, the facts are that the plaintiffs have filed a suit against the defendants for breach of contract, damages and permanent injunction from violating the registered copyright of plaintiff No.1 and other intellectual property rights etc. The suit was ordered to be registered and summons of the suit and notice of the interlocutory application under Order XXXIX Rules 1 & 2 were ordered to be issued to the defendants on 28th May, 2002, returnable for 19th September, 2002. The proceedings were taken up before the Joint Registrar on 19th September, 2002 when the counsel represented the defendants and sought time for filing written statement and reply to the IA. The Joint Registrar allowed

the same to be filed within one week. The matter was adjourned to 6th February, 2003. However, before the said date, the plaintiffs moved the present application being No. 565/2003 which came up for hearing on 17th January, 2003 and it was stated by the counsel for the defendants that the written statement stands already filed on that day and advance copy furnished to the counsel for the plaintiffs. The defendants were called upon to file the reply which was filed Along with the application seeking condensation of delay in filing the written statement.

3. I have heard the counsel for the parties and have given my thoughtful consideration to their respective submissions.

4. Learned counsel for the plaintiffs on the strength of the provisions contained in Rules 1 & 10 of Order VIII CPC (as they stand after the amendment) has vehemently urged that in the case in hand the defendants having failed to file the written statement within 30 days of the service of summons upon them or even within 90 days, are not entitled to any condensation of delay for any further period and even this Court has no power to condone the delay beyond 90 days as envisaged by Rule 1 of Order VIII CPC. As against this, the submission of the defendants is that despite the provisions as contained in Order VIII Rules 1 & 10 CPC, the Court by virtue of Rule 3 of the Original Side Rules, 1967 has still ample power to condone the delay in filing the written statement. In this connection, reliance has been placed to a Full Bench decision of this Court in the case of Print Pak Machinery Ltd. Vs. Jay Kay Papers Conveters, wherein the Court on an examination of the question of conflict in the provisions as contained in the CPC and those existing in the Rules framed by the High Court and more particularly in view of the provision of Section 129 CPC, ruled that Rules over-rides the provisions of the Code. Therefore strictly speaking, unless Rules framed by this Court are brought in conformity and in consonance with the amended provisions of the Code, the Rule 3 which empowers the Court to enlarge the time will have the field. Even otherwise, this Court having regard to the facts and circumstances disclosed in is No.1263/2003, is satisfied that there are sufficient grounds which explain the delay in filing the written statement and consider it a fit case where the delay in filing the written statement should be condoned and the written statement so filed by the defendants be taken on record, lest the defendants suffer grave prejudice.

5. In the result, is No.1263/2003 is allowed and the delay in filing the written statement is condoned and the written statement filed by the defendants is ordered to be taken on record subject to payment of Rs.10,000/- as costs. Consequently, is No.565/2003 filed by the plaintiffs is hereby dismissed.

6. Let the replication to the written statement, if any, may be filed within four weeks.

7. List before the Joint Registrar on 8th September, 2003 for completion of pleadings and admission/denial of documents.