

(2023) 03 DEL CK 0129

In the Delhi High Court

Case No : Civil Suit (COMM) No. 146 Of 2021, I.A. No. 4555, 9687 Of 2021, 6721, 20431 Of 2022

Khadi And Village Industries Commission

APPELLANT

Vs

Roopika Rastogi And Anr

RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Citation : ?

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Shwetasree Majumder, Devyani Nath, Archita Nigam, Ritesh Kumar Chowdhary, NiyasValiyathodi

Judgement

1. In somewhat convoluted circumstances, the precise issue that arises for consideration at this Court today is the ambit of the expression "where the summons is for appearance and for filing written statement", as employed in Rule 2(i) of Chapter 7 of the Delhi High Court (Original Side) Rules 2018 ("the Original Side Rules").

2. Procedure when defendant appears.—

If the defendant appears personally or through an Advocate before or on the day fixed for his appearance in the writ of summons:—

(i) where the summons is for appearance and for filing written statement, the written statement shall not be taken on record, unless filed within 30 days of the date of such service or within the time provided by these Rules, the Code or the Commercial Courts Act, as applicable. An advance copy of the written statement, together with legible copies of all documents in possession and power of defendant, shall be served on plaintiff, and the written statement together with said documents shall not be accepted by the Registry, unless it contains an endorsement of service signed by such party or his Advocate. The written statement shall also contain a statement certifying authenticity of document(s)

filed. Where copy(ies) of document(s) are filed, it shall be specified in the index as to in whose custody, power and control are the original(s) thereof. Service of summons for the purpose of this Rule shall only be deemed to be complete after inspection is provided by the Plaintiff, if such inspection is sought by an application moved within a period of 7 days from the receipt of first set of summons.

2. The facts in which this issue arises for consideration may briefly be noted.

3. Summons were issued by this Court, in the present suit instituted by the plaintiff, on 25th March 2021. Paras 5 and 6 of the order passed by the Court on the said date read thus:

"5. The plaint is registered as suit.

6. Upon filing of process fee, issue summons to the Defendant by all permissible modes. Summons shall state that the written statement shall be filed by the Defendant within 30 days from the date of receipt of summons. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record."

Clearly, the direction of the Court was that the summons issued to the defendant were required to "state that the written statement shall be filed by the defendant within 30 days from date of receipt of summons".

4. Mr. Ritesh Chowdhary, learned Counsel for the defendant contends – and Ms. Swetasree Majumdar, learned Counsel for the plaintiff fairly does not contest the contention – that the summons received by the defendant read thus:

"IN THE HIGH COURT OF DELHI AT NEW DELHI (ORDINARY ORIGINAL CIVIL JURISDICTION)

I.A. NO. 4555/2021 IN CS(COMM.) No.146/2021 DRAFT

Khadi & Village Industries CommissionPlaintiff

Versus

Roopika Rastogi and AnrDefendant

To

Defendant:

1. Roopika Rastogi

Iwearkhadi

10, Rafi Ahmad Kidwai Nagar,

Eldeco Greens,

Gomti Nagar, Lucknow

Uttar Pradesh 226010

Email: iwearkhadil5@gmail.com

2. Dainty Indian Needle Work Export House LLP

10, Rafi Ahmad Kidwai Nagar,

Eldeco Greens,

Gomti Nagar, Lucknow UP 226010 IN

Also at:

13-A YMCA Building,

Rana Pratap Marg Hazratganj,

Near Danik Jagran Chauraha,

Lucknow, Uttar Pradesh 226001

Email: iwearkhadil5@gmail.com

Upon motion made unto this Court by Ms. Shwetasree Majumdar, Advocate, (Counsel for the Plaintiff) and UPON CONSIDERING the application (I.A. No.4555/2021) u/o 39 Rules 1 & 2 read with Section 151 CPC and after hearing the counsel for plaintiff on 25.03.2021 THIS COURT DOTH ORDER THAT till the next date of hearing Defendants, their partners, servants, representatives, agents and all others acting for and on their behalf are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly providing any kind of goods or services under the trademark/ tradename 'IWEARKHADI', either as a word or as part of a logo, the logo and/or any mark identical or deceptively similar to the Plaintiffs registered 'Khadi' trademarks and Charkha logos, amounting to infringement or passing of the Plaintiffs trademarks.

AND THIS COURT DOTH LASTLY ORDER THAT this order will punctually be observed, obeyed and carried out by all concerned.

Take further notice that the suit is listed on 05.08.2021 at 10.30 a.m before this Hon'ble Court and on 22.07.2021 at 11.00 a.m. before Joint Registrar(Judicial) of this Hon'ble Court.

Given under my hand and the Seal of this Court, in terms of order dated 25.03.2021.

Assistant Registrar (O)

Ifor Registrar General"

5. On 30th September 2021, the learned Joint Registrar (Judicial) ("the learned JR") noted thus:

"As per record, both the defendants were served through email dated 21.07.21 in main suit and IA no 4555/2021. Further both defendants have been served in IA no. 9687/2021 through email on 18.09.2021.

Defendants may file written statement and admission denial affidavits within stipulated period from the date of their service with copy to opposite side, who is at liberty to file replication, admission/denial affidavit and joint schedule of documents within four weeks after receipt of advance copy of written statement filed by defendants with copy to opposite side."

The afore-extracted paragraphs from the order dated 30th September 2021 clearly grant permission to defendants to file written statement and affidavit of admission and denial within the stipulated period from the date of service of their summons thereon.

6. As no written statement was filed, the learned JR, vide order dated 18th July 2022, closed the right of the defendant to file written statement.

7. That order is not under challenge and has attained finality. Mr. Chowdhary, learned Counsel for the defendant does not, for that matter, seek permission to file any written statement at this point of time.

8. The problem that has arisen is because Mr. Chowdhary, on behalf of his client, desires to file an affidavit of admission and denial of the documents filed by the plaintiff. The order passed by the learned JR on 13th February 2023, however, forecloses this option. It reads, to the extent relevant, as under:

"The counsel for the plaintiff states that no admission/denial needs to be conducted since the defendant has not filed any written statement or the affidavit of admission/denial.

The counsel for the defendant states that the written statement of the defendant was returned by the registry.

The record suggests that the written statement was never re-filed. It means there is no defence statement of the defendant on record.

In these circumstances, the admission/denial need not to be conducted."

(Emphasis supplied)

9. Mr. Chowdhary's submission is that he cannot be denied the right to admit or deny the documents filed by the plaintiff, even if he has not filed the written statement.

10. Learned Counsel for the plaintiff fairly conceded, on the last date of hearing, that the right to file an affidavit of admission and denial was not necessarily contingent on the filing of a written statement. However, Ms. Shwetaree Majumdar, learned Counsel for the plaintiff, submits that the outer limit within which affidavit of admission and denial could have been filed by the defendant has expired concurrently with the expiry of the time limit for filing written

statement and that, therefore, no affidavit of admission and denial can be permitted to be placed on record at this stage. She relies, for this purpose, on Rules 3, 4 and 7 of Chapter VII of the Original Side Rules.

3. Affidavit of admission/denial of documents alongwith written statement.— Alongwith the written statement, defendant shall also file an affidavit of admission/denial of documents filed by the plaintiff, without which the written statement shall not be taken on record. Alongwith the written statement, the defendant shall be entitled to file applications for interrogatories for examination of the plaintiff together with proposed interrogatories; application for discovery; and application for inspection of such documents. The affidavit referred to in this Rule shall be in accordance with the provisions of Rule 4 of Order XI of the Code, as applicable under the Commercial Courts Act.

4. Extension of time for filing written statement.— If the Court is satisfied that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within 30 days, it may extend the time for filing the same by a further period not exceeding 90 days, but not thereafter. For such extension of time, the party in delay shall be burdened with costs as deemed appropriate. The written statement shall not be taken on record unless such costs have been paid/deposited. In case the defendant fails to file the affidavit of admission/denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted. In case, no written statement is filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement.

7. Affidavit of admission/denial of documents, even if replication not filed.— Irrespective of whether the plaintiff files the replication or not, the plaintiff shall be bound to file affidavit of admission/denial of documents filed by the defendant alongwith the written statement within the time permissible for filing replication. In case the plaintiff fails to file the said affidavit, the documents filed by the defendant shall be deemed to be admitted. The Court or the Registrar, as the case be, shall exhibit documents admitted by the parties. The affidavit referred to in this Rule shall be in accordance with the provisions of Rule 4 of Order XI of the Code, as applicable under the Commercial Courts Act.

11. Mr. Chowdhary, on the other hand, submits that as no summons for appearance and for filing written statement were served on his client, the defendant cannot be bound down to the time periods envisaged in the various rules in Chapter VII of the Original Side Rules. Mr. Chowdhary also sought to submit that the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, did not envisage any outer time limit within which an affidavit of admission and denial could be filed.

12. This latter contention of Mr Chowdhary cannot, however, be accepted as, in its judgement in *Ram Saroop Lugani v. Nirmal Lugani* AIR 276 (2021) DLT 681 (DB), a Division Bench of this Court has held categorically that the Original Side

Rules would, in the event of inconsistency, prevail over the CPC. If, therefore, the Original Side Rules require the affidavit of admission and denial to be filed with the written statement, that requirement would prevail over any stipulation to the contrary in the CPC.

13. Mr. Chowdhary also sought to place reliance on Rule 4(d) of Chapter X(A) of the Original Side Rules which, accordingly to him, effectively reaches down the requirement envisaged in Chapter 7 Rule 2(i).

4. Other orders/directions.—The Court may, inter-alia, pass orders/directions as it may think fit for the speedy disposal of the suit or narrowing the controversy between the parties, including—

(d) calling upon the parties to, after inspection of the documents, file statements of admission/denial as per Order XI Rule 4 of the Code.\

14. I have heard learned Counsel for the parties and applied myself to the legal provisions which arise for consideration.

15. There can be no doubt about the fact that no equities, whatsoever, vest in favour of the defendant. Ms. Majumdar is justified in expressing consternation at the fact that, having been served summons as far back as on 21st July 2021, the defendant is, at this late juncture, seeking to urge a contention that the summons which were served were not in accordance with the mandate of the law.

16. We are, however, concerned, in the present case, with a facet of procedure. The right to contest one's case is a sanctified legal right which, save and except in the manner in which the law proscribes its exercise, has, if possible, to be extended.

17. The Court cannot, therefore, allow itself to be unduly swayed by the equities of the situation. The fact of the matter is that the summons which were served on the defendants on 21st July 2021 were not in consonance, not only with the directions contained in the order dated 25th March 2021, but also not in consonance with Chapter 7 Rule 2(i), inasmuch as they did not call upon the defendant to enter appearance and file written statement.

18. Ms. Majumdar also sought to query as to whether, if such a lapse had taken place at the part of the Registry, the defendant could be allowed to reap an unfair advantage. Irrespective of where, and when, the lapse has occurred, the fact of the matter, as already noted is that the summons served on the defendant did not call on the defendant to file a written statement, despite Rule 2(i) in Chapter VII of the Original Side Rules so ordaining and despite the specific direction to that effect contained in para 6 of the order dated 25th March 2021 passed by this Court while issuing summons.

19. To my mind, there is no ambiguity about Rule 2(i) in Chapter VII whatsoever. The opening words of the provision are "where the summons is for appearance and for filing written statement". Where the summons is not for appearance and

filing written statement, ergo, Rule 2(i) in Chapter VII would not apply. The words "is for appearance and for filing written statement" cannot be regarded as otiose or superfluous. The summons received by the defendant on 21st July 2021 did not call upon the defendant to appear and file written statement. The time limits envisaged by Rule 2(i), therefore, cannot be enforced against the defendant.

20. Having said that, however, the Court is not inclined, on that basis, to grant any further time to the defendant to file written statement. Indeed, Mr. Chowdhary, too, does not seek any such latitude. The only issue before the Court is whether the Defendant 1 should be permitted to file an affidavit of admission and denial.

21. Rule 3 in Chapter VII of the Original Side Rules states that, along with the written statement, the defendant shall also file an affidavit of admission and denial of the documents filed by the plaintiff.

22. Where a defendant does not seek to file any written statement, its right to file an affidavit of admission and denial of the documents filed by the plaintiff cannot be ipso facto foreclosed, no such provision envisaging such foreclosure existed either in the CPC as amended by the Commercial Courts Act or in the Original Side Rules. Even otherwise, it is open to a party not to file a written statement contesting the allegations in the plaint and nonetheless seek to admit or deny the documents filed with the plaint. It is for a party to decide as to whether it desires, on affidavit, by way of written statement, to contest the assertions in a plaint. The abandonment of the right to file a written statement does not, therefore, ipso facto result in abandonment of the right to file an affidavit of admission and denial.

23. The reliance, by Ms. Majumdar, on Rules 3, 4 and 7 of Chapter VII of the Original Side Rules cannot, in my view, foreclose the right of the defendant to file an affidavit of admission and denial, for the simple reason that the said Rules apply subject to the initial requirement of summons having been issued to the defendant for appearance and for filing written statement. That having not been done till date, it would not be possible for this Court to deny, to the defendant, the right to file an affidavit of admission and denial of the documents filed by the plaintiff.

24. The reliance, by Mr. Chowdhary, on Rule 4(d) in Chapter X(A) of the Original Side Rules does not appear to this Court to be justified. Rule 4 of Chapter X(A) deals with the nature of orders which can be passed by a Court for speedy disposal of the suit or for narrowing the controversy between the parties. Clause (d) thereunder empowers the Court to call upon the parties to, after inspection of the documents, file statements of admission and denial as per Order XI Rule 4 of the CPC. Where Chapter VII Rule 2(I) would apply, it is not possible to read down the time periods envisaged in that provision by seeking recourse to Rule 4(d) in Chapter X(A) of the Original Side Rules.

25. In the present case, however, to reiterate, no summons in terms of Chapter 7 Rule 2(i) of the Original Side Rules having been issued to the defendant, I am not inclined to foreclose the right of the defendant to file an affidavit of admission and denial of the documents filed by the plaintiff.

26. Even otherwise, no serious prejudice would result even if such an affidavit of admission and denial is permitted to be filed, as the right of the defendant to file written statement in any event stands concluded. The extent to which an affidavit of admission and denial would be of aid to the defendant, in the absence of any written statement, may be debatable. That, however, is a matter on which the Court would have to take a call at the time of consideration of the suit on merits.

27. In view of the aforesaid, I am inclined to grant one week and no more to the defendants to file an affidavit of admission and denial of the documents filed by the plaintiff.

28. Let the matter be listed before the learned Joint Registrar (Judicial) for marking of exhibits on 24th March 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

I.A. 9687/2021 (under Order XXXIX Rule 2A of the CPC)

29. Ms. Majumadar seeks and is granted two weeks' time to file rejoinder to the reply filed by the defendants to this application.

30. Accordingly, re-notify on 17th April 2023.

I.A. 6721/2022 (under Order XXXIX Rule 2A of the CPC)

31. Mr. Chowdhary submits that the time granted by this Court to file reply to this application ends tomorrow, he undertakes to file reply within the said period rejoinder, if any, be filed before the next date of hearing.

32. He seeks and is granted a week's further time.

I.A. 20431/2022 (under Order XII Rule 6 read with Section 151 of the CPC)

33. Rejoinder to the reply filed by the plaintiff/non-applicant to this application be filed within a period of two weeks from today.

34. Re-notify all these applications for hearing and disposal on 17th April 2023.