

(1983) 02 BOM CK 0040

In the Bombay High Court

Case No : Civil Revision Application No. 541 of 1981 (Nag.)

Kheta Sons and Co.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-02-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2, 80

Citation : (1983) 85 BOMLR 239 : (1983) MhLj 621

Hon'ble Judges : Puranik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Puranik, J.—Rule was issued in this case against an order passed by civil Judge, senior division, Nagpur on August 14, 1981 whereby the trial Court granted further time to the defendants - the State Government and other government servants to file their written statement, inspite of opposition on the part of the plaintiff's counsel. The question in dispute, therefore, revolves around interpretation of Order 27 Rule 5 of the Code of Civil Procedure.

2. To appreciate the contentions of counsel for both the parties, the background of the case needs to be stated summarily as follows.

3. The applicant/plaintiff filed a suit against the State of Maharashtra and four other government officers working under the State of Maharashtra for recovery of arrears of rent along with interest in respect of a godown which was let out to the State of Maharashtra and was subsequently handed over back to the plaintiff. The arrears of rent are in respect of the period November 1, 1977 to October 31 1978. The plaintiff had also issued the statutory notice u/s 80 of the CPC on May 6, 1978 to all the defendants and was duly acknowledged by them. It is thereafter that the plaintiff was constrained to present this suit on December 15, 1980. It was registered as Special Civil Suit No. 237/80.

4. The Roznama of the suit shows that the plaint was presented on December

12, 1980 and after its registration, the suit was placed before the trial Court on December 30, 1980. On this date, the trial Court issued summonses to all the defendants for settlement of issues and it was posted on March 6, 1981. On the very first date of appearance for settlement of issues all the five defendants appeared through the District Government Pleader, Mr. Ghorpade. He also filed an application (ex. 12) for grant of time to file the written statement on behalf of the defendants. The case was then posted to April 7, 1981 when again the district government pleader sought further time to file written statement. The case was then posted to April 28, 1981, June 17, 1981 and July 7, 1981 for filing of written statement at the request of the government pleader. It may be noted that the applications for grant of time to file written statement were opposed by the plaintiff/applicant from time to time. The case was then posted for filing of written statement on August 14, 1981. On this date again the government pleader filed application (ex. 18) for grant of further time to file written statement. This was seriously opposed by the counsel for the plaintiff on similar grounds as on the earlier dates of hearing. On this occasion, the plaintiffs' counsel requested the Court that it should pronounce the judgment under Order 8 Rule 5(2) read with Rule 10 of the Code of Civil Procedure. The learned trial Judge on the same day passed a speaking order rejecting the objection of the plaintiff and allowing the application of the government pleader for further time to file written statement and posted the case to September 1, 1981 for filing of written statement. It is this order dated August 14, 1981 passed below ex. 18 which is impugned by the plaintiff/applicant in this revision application.

5. Mr. R.D. Chaudhary, Advocate, appears for the applicant/plaintiff, while the non-applicant Nos. 1, 2 and 4 are represented by Mr. S.Z. Deshbhratar, Asstt. Government pleader and none represented non-applicant Nos. 3 and 5.

6. It is contended on behalf of the applicant that Order 27 Rule 5 of the CPC fixes a time limit for filing of written statement on behalf of the Government and Government officers when they are impleaded as defendants in a suit. According to the applicant, the defendants had put in their appearance on March 6, 1981 itself and thereafter over 5? months the case was posted on several dates granting time to the defendants for filing the written statement. According to the applicant, therefore, the time to file written statement has been unreasonably extended at the sweet will and discretion of the trial Court contrary to the time limit fixed by the amended Rule 5 of Order 27 of the Code of Civil Procedure.

7. Mr. Deshbhratar for the non-applicants/defendants submitted that it becomes difficult for the Government pleader to secure instructions from the department and as such a reasonable time should be granted when the government is a party to the suit. He submitted that there are four Government servants involved as defendants in this case apart from defendant No. 1, the State of Maharashtra. He submitted that owing to the difficulty in securing instructions and parawise comments from all the defendants, the delay in filing the written statement should be condoned. It appears that he was instructed that the written statement

has been filed before the trial Court on September 1, 1981, but the original record does not show that any such written statement has been filed.

8. Before the amending Act 104 of 76 was passed Rule 5 of Order 27 allowed full discretion to the trial Court in extending the time for filing the defence to a plaintiff on behalf of the Government defendant. The 14th report of the Law Commission of India on Judicial Administration Vol. I 1958 at page 303 in para. 13 had stated as follows:

Long delays sometimes extending over a year occur at the stage of filing a written statement in suits in which Government is defendant. This occurs particularly in suits against a railway administration. Order XXVII, Rule 5 of the CPC makes a special provision for cases in which Governments have to answer plaintiffs and empowers a court in fixing the day for the Government's written statement to allow a reasonable time for necessary communication with the Government through the proper channel and for the issue of instructions to the Government Pleader to appear and answer on behalf of the Government and to extend the time at its discretion. The Government is therefore entitled to special consideration and a reasonably longer time than the ordinary litigant. However, unreasonable and inordinate delays do occur because the Government Pleaders are unable to get prompt instructions from the departments concerned to enable them to draft a defence. Once the court has in its discretion allowed sufficient time to Government, we are unable to see any justification for further extensions of time being granted to Government. Armed with their Law Officers and Legal Departments, Governments ought to be able to file their defences within a reasonable time. It should therefore be the duty of the presiding officer to enforce the law with firmness in such cases if the reasonable time granted to Government has expired. In view of our recommendation that the provision in Section 80 of the CPC requiring notice to be given to Government of intended suits should be omitted, we are of the view, that Government should be given three months' time to file its written statement. In Madras, the High Court has amended the Rule so as to provide for not less than three months' time from the date of summons to be given to Government for filing its written statement. We recommend that Order XXVII Rule 5 be amended on the lines of the Madras amendment. Such an amendment will strengthen the hands of the courts and the Government Pleaders and at the same time serve as a reminder to the departments concerned of the necessity of giving prompt instructions to the Government pleaders.

9. However, at that stage, the CPC was not amended. Another report was submitted to the Government vide statement of Objects and Reasons (Gaz. of India, April 8, 1974, pt. II, Section 2 ext., p. 329). It recommended at Clause 79 Sub-clause (i) that:

In a suit against the Government or a public officer, the Court is required, under Rule 5 of Order XXVII to allow a reasonable time for the necessary communication with the Government through the proper channel with regard to

the subject-matter of the suit to enable the Government to issue instructions to the Government Pleader to appear and answer on behalf of the Government or the public officer. It is felt that a period of two months should normally suffice and in the interest of expedition, the law itself should provide the time. The rule is being amended accordingly.

10. Finally, a comprehensive report was submitted to the Government for amendment of the CPC and in the said report, vide the Gazette of India Extraordinary dated April 1, 1976 part II Section 2 page 804/18 at item No. 57, it was stated as follows:

The committee note-that in the case of a suit against the Government or a public officer, the maximum time which the court can grant for the filing of the defence is two months in the aggregate whereas there is no such restriction on the powers of the court to grant time to file written statement in the case of other defendants. The Committee feel that this may be regarded as discriminatory. The Committee are of the view that initially the court should have discretion to fix such time as it might think fit for filing of defence by the Government, but so far as the extension of the time is concerned, the period of such extension should not exceed two months in the aggregate. Sub-clause (i) of this clause has been amended accordingly.

It is on the basis of this, that we find the amendment effected to Rule 5 of Order 27 of the Code of Civil Procedure.

11. The intention of the Legislature is very clear, that in so far as the government and government officers are concerned in the matter of answering to a plaint, the Court may allow a reasonable time for the said purpose and that the time may be extended at its discretion by the Court, but the time so extended shall not exceed two months in the aggregate.

12. Judicial notice can be taken of the fact that the government has a vast administrative machinery at its disposal to meet the necessary requirements for purposes of offering the instructions to the government pleader to answer plaint. It is also pertinent to note that to safeguard the interest of the Government, the legislature in its wisdom has incorporated Section 80 in the CPC and unless a statutory notice u/s 80 of the CPC is issued by the plaintiff of the filing of the proposed suit, giving 60 days time to the government, the suit against the government cannot be tendered before the Court. In my opinion, sufficient liberal approach has been taken by the Legislature in granting 60 days time to the State Government to make necessary arrangements for preparing the defence or for settlement of the dispute, even before filing of the plaint. Apart from that, Order 27 Rule 5 gives sufficient discretion to the trial Court to give as long a date as possible at the very initial stage of issuance of summons calling upon the defendants to appear and answer the plaint. It is in these circumstances that the Legislature has amended Rule 5 of Order 27 restricting the discretion of the trial Court in the matter of extension of time to file written statement on behalf of the

Government which should not exceed two months in the aggregate.

13. In the instant case, it is to be noted that the statutory notice u/s 80 of CPC was issued by the plaintiff as far back as May 6, 1978, while the suit itself was filed on December 17, 1980 i.e. almost after 2 years. Again, it is to be noted that the summonses were issued against the Government and Government officers in this case on December 30, 1980 not only for appearance, but for settlement of issues and that the summonses were made returnable on March 6, 1981, that is to say, the very first appearance was posted more than two months after the issue of summonses. It is thereafter, that the appearance on behalf of the Government and Government servants has been put in on March 6, 1981 and the case has been adjourned from time to time for filing of written statement, till the impugned order was passed on August 14, 1981. On August 14, 1981 also, the defendant had sought further time to file written statement. Sufficient and liberal extension of time has been granted in the instant case to the defendants. It must be noted that under Rule 5 of Order 27, before amendment of 1976, the Court had discretion to extend the time without any limit for filing the defence on behalf of the government, but under the rule after its amendment, the time so extended cannot exceed two months in the aggregate. I feel that even if liberally construed and holding that the time limit of two months is not technically mandatory, yet the discretion used in the instant case for extending the time till beyond August 1981 was far exceeding the statutory limit indicated in Rule 5 of Order 27 and in that view of the matter, the impugned order is not rational and is liable to be set aside.

14. It must be observed that the restriction put on the defendants Government and Government servants is with a certain purpose and intention as would be seen from the Law Commission Report and the Judicial Commission Report cited supra. The very purpose of the newly legislated provision would be frustrated if the Courts were to exercise discretion at will under the amended provision. In this view of the matter, I have no hesitation to conclude that the impugned order of the trial Court is in excess of the jurisdiction vested in it by law and needs to be interfered with.

15. In the result, the revision application succeeds and the impugned order dated August 14, 1981 passed by the Civil Judge, Senior Division, Nagpur, in Special Suit No. 237/80 (Kheta Sons & Co. v. State of Maharashtra and Ors.), is quashed and set aside. The trial Court is directed to proceed with the suit without the written statement of the defendants on record, according to law. Parties are directed to appear before the trial Court on February 21, 1983 for fixing date of further proceedings.