

(2004) 09 DEL CK 0004

In the Delhi High Court

Case No : IA No. 6102 of 2004 and CS (OS) No. 2181 of 2003

K.R. Builders Private Limited

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 97(1)
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, 122, 129
Delhi High Court (Original Side) Rules, 1967 — Rule 3
Delhi High Court Act, 1966 — Section 7

Citation : (2005) 118 DLT 12

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.

IA No.6102/2004

1. In the Judgment in I.A. 3246/03 in CS(OS) 714/01& Counter Claim No. 646/2001 titled as M/s. Textstyles and others versus M/s. Kiran Overseas Export Limited and another, I have already articulated the opinion that after the expiry of ninety days from the date of the service of the Defendant the Court does not possess any discretion or power under Order VIII Rule 1 in enlarging time for the purposes of filing the Written Statement.

2. Two Judgments have now been shown to me which require to be discussed in deference to the views of my learned Brothers. In Dr. Sukhdev Singh Gambhir Vs. Shri Amrit Pal Singh and Others, the delay in filing the Written Statement after approximately four and a half years had been condoned. The decision of the Hon"ble Supreme Court in Topline Shoes Ltd. vs. Corporation Bank AIR 2002 SC 2487 had also been relied upon but this view may not hold sway in view of the

subsequent decision of a Larger Bench reported as Dr. J.J. Merchant and Others Vs. Shrinath Chaturvedi, applied by me in M/s. Textstyles (supra). In Gambhir's case (supra) my learned Brother had specifically noted that the Suit was one for partition. It is trite to state that in this genre of suits each party possesses the dual character of plaintiff as well as Defendant. It had been noted that a Written Statement had been proffered to the Plaintiff in the District Court which Plaintiff was subsequently returned on the grounds of pecuniary jurisdiction. My learned Brother had also recorded that time had been granted on several occasions to enable the parties to arrive at an amicable settlement. Quite clearly, Therefore, Order VIII Rule 1 of the CPC had not been attracted to the facts of that case since the case had been adjourned beyond the critical 90 days by consent of parties. My learned Brother had noted the provision of Section 89 of the CPC which made it obligatory that efforts should be made to settle the family disputes amicably. The condensation of delay of four and a half years, Therefore, rested on the facts of that particular case.

3. My attention has also now been drawn to the decision of Hon'ble Mr. Justice R.C. Jain in J. Kohli and Another Vs. Mr. Ram Bhagwat and Others, . My learned Brother had alluded to Rule 3 of the Delhi High Court (Original Side) Rules, 1967 which I have also considered. With all respect and humility, I cannot concur with his views. Had the decision been brought to my notice earlier I would have preferred to refer the entire question to the Hon'ble Chief Justice for reference to the Division Bench.

4. My attention has also been drawn to the decision of the Hon'ble Division Bench in Iridium India Telecom Ltd. Vs. Motorola Inc. and Another, where it observed that - "In our opinion section 148, which is repository of the general power to extend time cannot override the express limitation of Order VIII, Rule 1, which has been amended by the amending Act and which has prescribed outer limit of 90 days beyond which written statement could not be entertained. Therefore, the learned single Judge clearly erred in holding that the time to file a written statement could be extended beyond the outer limit of 90 days by resorting to section 148. Having said this, it would now have to be seen whether the provisions of Order VIII, Rule 1 would apply to suits on the Original Side, or whether they would continue to be governed by Original Side Rules". Thereafter, the Court also considered the decision of the Full Bench of our Court in Print Pak Machinery Ltd. Vs. Jay Kay Papers Converters, and came to the conclusion that the provision of Order VIII Rule 1 would not apply to Suits on the Original Side.

5. Section 33(1) of The CPC (Amendment) Act, 2002 reads thus:

33. Repeal and Savings. (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in and so far as such amendment or provisions is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

This provision is identical to Section 97(1) of The CPC (Amendment) Act, 1976. In M/s. Printpak's case (supra) The Delhi High Court (Original Side) Rules, 1967 have been enforced in exercise of powers conferred by Sections 122 and 129 of The Code of Civil Procedure, 1908 and Section 7 of the Delhi High Court Act, 1966 which read thus.

122. Power of certain High Courts to make rules -- [High Courts [not being the Court of a Judicial Commissioner]] may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

129. Power of High Courts to make rules as to their original civil procedure -- Notwithstanding anything in this Code, any High Court [not being the Court of a Judicial Commissioner] may make such rules not inconsistent with the Letters Patent [or order] [or other law] establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

7. Practice and Procedure in the High Court of Delhi-- Subject to the provisions of the Act, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Delhi and accordingly the High Court shall have all such powers to make rules and others with respect to practice and procedure as are immediately before the appointed day exercisable by the High Court of Punjab and shall also have powers to make rules and orders with respect to practice and procedure for the exercise of its ordinary original civil jurisdiction:

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court of Punjab shall, until varied or revoked by rules or orders made by the High Court of Delhi, apply with the necessary modifications in relation to practice and procedure in the High Court of Delhi as if made by that High Court.

Keeping all these provisions in view I would have thought that the CPC (Amendment) Act, 2002 would have the effect of repealing the provision of the Delhi High Court (Original Side) Rules, 1967 in case of any inconsistency. 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. In Geetika Panwar and Others vs. Government of NCT of Delhi and Others, the Constitution Bench of this Court had opined that the Legislative Assembly of Delhi was not competent to enact legislation raising the pecuniary jurisdiction of the Delhi High Court from Rs.5,00,000/- to Rs.20,00,000/-. Parliament has thereafter passed the same enactment which has been implemented immediately. The views of the Full Bench (three Judges) are,

Therefore, not reconcilable with that of the Constitution Bench (Five Judges) and would accordingly stand overruled. 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.

6. Since the precedents mentioned above had not been brought to my notice earlier, I direct that these Orders should be made an addendum to the Judgment in I.A. 3246/03 in CS(OS) 714/01& Counter Claim No. 646/2001 titled as M/s. Textstyles and others versus M/s. Kiran Overseas Export Limited and another, so that it may be more comprehensive.

7. In the present case the Defendant had been allowed thirty days time to file his Written Statement by the Joint Registrar which expired on 11.6.2004. Accordingly, the Written Statement could have been filed on the opening day after the summer vacations, that is, 5.7.2004. It has, in fact, been filed on 18.8.2004 that is beyond the period of ninety days from the date of service. I am of the view that this Court does not possess powers to enlarge the time.

8. 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 site or at other offices". There is no justification or ground to violate the mandate of the law. The Defendant should have taken steps within the prescribed period.

9. The application is without merit and is dismissed.

CS(OS) No.2181/2003

10. plaintiff shall lead evidence by way of Affidavit(s) which should be filed within six weeks from today. Matter be listed before the Joint Registrar for exhibition of documents on 23.11.2004 and before the Court for cross-examination of the plaintiff's witnesses on 10.1.2005.