
(2013) 02 DEL CK 0405
In the Delhi High Court
Case No : CM (M) 124 of 2013

Mount Carmel School Society

APPELLANT

Vs

Viom Network

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0405

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : R.K. Modi, for the Appellant;

Final Decision : Dismissed

Judgement

Pratibha Rani, J.

CM No. 1736/2013 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CM (M) No. 124/2013 & CM No. 1840/2013 (Stay)

1. The petitioner, who was plaintiff in Civil Suit no. 970/2011, has filed the present petition under Article 227 of The Constitution of India praying for setting aside the order dated 21.11.2012 passed by learned Addl. District Judge whereby his application moved under Order 8 Rule 1 CPC read with Section 151 CPC, was dismissed. Heard learned counsel for the petitioner.

2. The order dated 21.11.2012 has been impugned on the ground that since the respondent failed to file written statement within the stipulated period, there existed a valid ground for throwing out the written statement filed after inordinate delay. It has been contended by learned counsel for the petitioner that pendency of application filed by the defendant u/s 8(1) of Arbitration and Conciliation Act, 1996 in itself was no ground to extend the period within which

the written statement was required to be filed by the respondent. Learned counsel for the petitioner has relied upon Gautam Bhowmick Vs. Prem Chand, in support of his contentions.

3. I have considered the submissions made by learned counsel for the petitioner. While considering the prayer of the petitioner made in this petition, it is necessary to peruse the proceedings before learned Trial Court, certified copy of which are placed on record by the petitioner alongwith this petition.

4. The proceedings dated 11.09.2012 reveal that on that date, the matter was fixed for filing the written statement and since none appeared on behalf of the defendant till 12.25 pm, the matter was kept pending for post-lunch sessions. When the matter was taken up again at 2.30 pm, learned counsel for the defendant/respondent herein appeared and filed the written statement, copy of which was also supplied and matter was adjourned to 28.09.2012 for filing replication.

5. On 28.09.2012, AR of the plaintiff filed the copy of SPA and at his request, matter was further adjourned to 15.10.2012 for filing the replication.

6. In the impugned order dated 21.11.2012, learned Trial Court has specifically mentioned that after entering appearance on 13.03.2012, the defendant filed an application u/s 8 of Arbitration & Conciliation Act, which was disposed of by the Court vide order dated 21.07.2012. Thereafter the written statement has been filed by the defendant on 11.09.2012 i.e. on the day when it was listed for the purpose of filing the written statement. Thereafter, the application under Order 8 Rule 1 CPC was moved by the present petitioner, who was plaintiff in the suit, after lapse of period of two months and 10 days and learned Trial Court dismissed the said application observing as under :-

It is seen from the record that an application u/o 8 of the Arbitration & Conciliation Act was filed by the defendant and the same was decided vide order dated 21.07.2012. Defendant has filed W.S. on 11.09.2012. It is correct that CPC provides for 30 days for filing the W.S. from the date of service of summons which can be extended upto 90 days for sufficient reasons. However, the same cannot be considered as iron tight jacket formula. When the W.S. is already on record it is necessary in the interest of justice the parties be given sufficient opportunity to contest the suit. Hence, application under Order 8 Rule 1 of CPC filed by the plaintiff is dismissed.

7. The case law Gautam Bhowmick vs. Prem Chand (supra) relied upon by learned counsel for the petitioner has no applicability to the facts of the present case as in that case, on non-filing of written statement, the Trial Court, in exercise of its power under Order 8 Rule 10 CPC, closed the right to file written statement, which is not the situation in the case in hand.

8. The only question that is required to be considered by this Court at this stage is whether taking on record the written statement on the date when it was fixed

for that purpose, though after expiry of 30 days from the date of service or even beyond a period of 90 days (for the reason that an application under Order 8 of Arbitration & Conciliation Act was pending before that date) amounts to perversity requiring interference by this Court. The legal position in this regard has been summarised by the Supreme Court in *Kailash Vs. Nanhku and Others*, , as under :

The provisions of O.8 R. 1 fixing time schedule for filing of written statement are directory and not mandatory. The purpose of providing the time schedule for filing the written statement under O. VIII R. 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to R. 1 of O. VIII of the CPC is couched in negative form, it does not specify any penal consequence flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by O. VIII R. 1 of the CPC is not completely taken away.

9. In view of the above legal position, I do not find any perversity or illegality in the impugned order requiring any interference by this Court under exercise of jurisdiction under Article 227 of The Constitution of India. The petition has no merits and the same is hereby dismissed. All pending applications are also dismissed.