

(2012) 02 DEL CK 0346

In the Delhi High Court

Case No : IA No. 18821 of 2011 and IA No. 854 of 2012 in CS (OS) 272 of 2011

Nunhems India Pvt. Ltd.

APPELLANT

Vs

Prabhakar Hybrid Seeds

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 8 Rule 1, Order 8 Rule 10, 151

Criminal Procedure Code, 1973 (CrPC) — Section 148

Citation : (2013) 197 DLT 393

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Ali Naqvi with Mr. A. Singh, for the Appellant; G.V.R. Choudhary with Mr. A. Chandra Sekhar, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—This common order shall dispose of the application filed by defendant under Order 8 Rules 1 and 10 read with Section 151, CPC seeking extension of time in filing written statement and the application filed by the plaintiff under Order 8 Rule 10 read with Section 151, CPC seeking pronouncement of judgment against the defendants. Brief background of the facts relevant for deciding the present applications are that the plaintiff has filed a suit for permanent and mandatory injunction seeking to restrain the defendant from producing, selling and offering to sell seeds which have identical DNA fingerprints to LAKSHMI (NP-5005) of the plaintiff. The plaintiff has also claimed damages to the tune of Rs. 2,20,00,800/- along with further unascertained damages towards the loss suffered by the plaintiff on account of illegal acts of the defendant, vide orders dated 7.2.2011, this Court directed summons in the suit and notice on the said application, returnable on 27th April, 2011. Nobody had appeared for the defendants on 27th April, 2011 although as per the service report, the defendant was served on 14th March, 2011. On 27th April, 2011 the matter was adjourned for 18th October, 2011 and since nobody had appeared for

the defendant on the said date, therefore, the Court directed fresh service of the defendants for the next date. The defendants in the meanwhile, had filed an application under Order 7 Rule 11, CPC on 15th October, 2011, for rejection of plaint which was taken up by this Court on 18th October, 2011. The plaintiff was directed to file reply to the said application within a period of four weeks and on filing of the reply, the defendant was directed to file rejoinder thereto within a period of two weeks thereafter. In the main suit, Counsel for the defendant made a submission that he would be filing an appropriate application within a week to seek extension of time for filing of written statement and will also file the written statement along with the said application itself. While adjourning the matter for 10th January, 2012 this Court observed in the said order that despite being served on 14th March, 2011 the written statement has not been filed by the defendant so far. Since the defendant had failed to file any written statement or move an application under Order 8 Rules 1 and 10, CPC within the said one week period or later and because of such lapse on the part of the defendant, the plaintiff had moved an application under Order 8 Rule 10, CPC, which application of the plaintiff is under consideration in the present order.

2. The plaintiff has moved the said application under Order 8 Rule 10 read with Section 151, CPC to seek pronouncement of judgment against the defendant on the ground that the defendant has failed to file the written statement within the time prescribed under Order 8 Rule 1, CPC. As per the plaintiff, the time frame of 30 days came to an end on 13.4.2011 from the date of service of the defendant on 14th March, 2011 and even the additional time of 60 days came to an end on 12.6.2011 and that despite the expiry of more than 160 days, the defendant did not file the written statement. Based on these averments, the plaintiff has claimed judgment and decree in its favour. In reply to the said application of the plaintiff and in support of the application filed by the defendant under Order 8 Rule 1, CPC, the common plea raised by the defendant is that there is no deliberate or wilful negligence on the part of the defendant in not filing the written statement as the defendant was under the misconception of law that the issue of jurisdiction will be decided by the Court at the first instance. It is also the case of the defendant that although on 18th October, 2011 Counsel for the defendant undertook to file the written statement within a week, but since the mother of the Counsel for the defendant had fallen seriously ill and eventually died on 13.11.2011, therefore, Counsel for the defendant got entangled and could not attend to his professional work and as a result thereof, the written statement could not be filed by the defendant as was undertaken by him. It is also the case of the defendant that the present suit involves highly intricate questions of law and, therefore, extensive research was required to be undertaken on the technical aspects of the matter and this also contributed to the delay on the part of the defendant in filing of the written statement. Counsel for the defendant has also taken a stand that since the written statement has already been filed by the defendant, therefore, taking into account the said bona fide reasons, the delay in filing the written statement be condoned.

3. In support of his arguments, Counsel for the plaintiff has placed reliance on the judgment of the Hon"ble Supreme Court in the case of R.N. Jadhav and Others Vs. Subhashchandra, , while Counsel for the defendant strongly placed reliance on the judgment of the Apex Court in the case of Saleem Bhai and Others Vs. State of Maharashtra and Others, .

4. I have heard learned Counsel for the parties on both the said applications.

5. It is no more res Integra that Order 8 Rule 1 so far it prescribes the time period of 30 days and maximum period of 90 days for filing the written statement from the date of the service of the summons has been held to be directory and not mandatory. The Apex Court in case of Kailash Vs. Nanhku and Others, , also took a view that by holding the said provision as directory, the same may not be understood as nullifying the entire force and impact of the said provision. The Apex Court also held that the extension beyond the period of 90 days can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. The relevant paras of the said judgment are extracted as below:

41. Considering the object and purpose behind enacting Rule 1 of Order 8 in the present form and the context in which the provision is placed, we are of the opinion that the provision has to be construed as directory and not mandatory. In exceptional situations, the Court may extend the time for filing the written statement though the period of 30 days and 90 days, referred to in the provision, has expired. However, we may not be misunderstood as nullifying the entire force and impact -- the entire life and vigour -- of the provision. The delaying tactics adopted by the defendants in law Courts are now proverbial as they do stand to gain by delay. This is more so in election disputes because by delaying the trial of election petition, the successful candidates may succeed in enjoying the substantial part, if not in its entirety, the term for which he was elected even though he may lose the battle at the end. Therefore, the Judge trying the case must handle the prayer for adjournment with firmness. The defendant seeking extension of time beyond the limits laid down by the provision may not ordinarily be shown indulgence.

42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days., as the case may be, should not be granted just as a matter of routine and merely for asking more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were

exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the Court. In no case, the defendant shall be permitted to seek extension of time when the Court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his Counsel, The Court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8 Rule 1, though couched in mandatory form, is directory being a provision in the domain of Proconsul law.

6. In the case of R.N. Jadi (supra) without disturbing the earlier view, in Kailash v. Nanhku (supra), the Apex Court put a note of caution that Kailash v. Nanhku is not the authority for receiving written statement, even after expiry of the period permitted by law in a routine manner. The relevant paras of the said judgment are reproduced as under:

5. It is true that procedure is the handmaid of justice. The Court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in Kailash Vs. Nanhku and Others, , which held that the provision was directory and not mandatory But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the Court, in an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that context that in Kailash v. Nankhu and Ors. (supra) it was stated that the extension of time beyond 90 days was not automatic and that the Court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the

Court in terms of Section 148 of the Code. Kailash is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

6. A dispensation that makes Order 8 Rule 1 directory, leaving it to the Courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the Court being conscious of the fact that even the power of the Court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by Courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in Courts. The lament of Lord Denning in *Allen v. Sir Alfred Mcalpine and Sons*, (1968) 1 All E.R. 543 that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?

7. Indisputably, the defendant in the present case was served on 14th March, 2011 and vide order dated 18th October, 2011, this Court categorically observed that the written statement has not been filed so far, although the defendant was served way back on 14th March, 2011. Counsel for the defendant sought time to move an appropriate application within a period of one week to seek extension of time in filing the written statement but the defendant failed to file the written statement till 9th January, 2012. Counsel for the defendant has given some personal reasons due to which he could not file the written statement and these reasons given by the defendant explain the delay on its part w.e.f. 18th October, 2011 till 9th January, 2012. However, the main concern of the Court is the delay which has taken place from the date of service i.e. 14th March, 2011 till 18th October, 2011 which the defendant has nowhere explained as to what prevented him to file the written statement within the said period. Even the application under Order 7 Rule 11, CPC was filed by the defendant much beyond the period of 90 days i.e. on 15th October, 2011. Reliance on the judgment in the case of *Saleem Bhai and Ors.* (supra) by the Counsel for the defendant will be of no help in the facts of the present case although there cannot be any dispute to the legal position enunciated therein. In any case of the matter, *Saleem Bhai* (supra) deals with the facts which are prior to the amendment in Order 8 Rule 1, CPC and, therefore, the judgment in the case of *R.N. Jadi* (supra) will squarely apply to the facts of the present case. Undoubtedly without filing the written statement, the defendant can file an application under Order 7 Rule 11, CPC but nevertheless the filing of such an application will not extend the period of limitation for filing the written statement as prescribed under Order 8 Rule 1, CPC unless the Court

on the filing of such an application prefers to decide such application at the first instance without calling for the written statement from the defendant. Invariably it has been found that this provision of Order 7 Rule 11 is often misused to delay the proceedings and, therefore, the Courts are to be conscious enough if they decide the application under Order 7 Rule 11 before calling for written statement. In the absence of such decision by the Court the defendant cannot take shelter merely by filing such an application to circumvent the mandate of Order 8 Rule 1, CPC by not filing the written statement within the time prescribed and keep dragging the matter on the application itself. Filing of an application under Order 7 Rule 11, CPC cannot be allowed to become a tool in the hands of unscrupulous litigants to defeat its main objective. There is no gain saying that the provision under Order 7 Rule 11, CPC can be invoked by the defendant at any stage of the suit and there is no time period prescribed under law for the presentation of such an application by the defendant. The Courts are fully competent to exercise the power under Order 7 Rule 11, CPC at any stage of the case where the Court finds that on a meaningful and not a formal reading of the plaint the same satisfies the conditions laid down under Order 7 Rule 11, CPC.

8. Coming back to the facts of the present case, it is quite evident that not only the defendant had failed to file the written statement within the extended period of 90 days but gave no reasons or explanation for not filing the written statement from the date of the service i.e. 14th March, 2011 till at least 18th October, 2011, whereafter Counsel for the defendant has given his personal reasons for not filing the written statement till January, 2012. In the absence of any explanation offered by the defendant for the said period of 6 months, this Court does not find that the defendant deserves grant of any concession to condone the said delay of nine months. In the light of the above discussion, this Court does not find any merit in the application filed by the defendant under Order 8 Rule 1, CPC and accordingly the right of the defendant to file the written statement stands closed. The application filed by the plaintiff under Order 8 Rule 10, CPC is also disposed of in terms of the above directions. The defence of the defendant is accordingly struck off in terms of Order 8 Rule 10, CPC.

I.A. No. 16996/2011

List the matter for consideration of the application filed by the defendant under Order 7 Rule 11, CPC on 9th May, 2012.