
(2008) 04 DEL CK 0116

In the Delhi High Court

Case No : I.A. No. 4059 of 2008 in CS (OS) No. 1059 of 2002

Rajinder Singh Anand

APPELLANT

Vs

Sardar Tarlok Singh Anand and Others

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3, Order 8 Rule 1, 151

Citation : (2008) 04 DEL CK 0116

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Sandeep Sethi and Amit Kumar, for the Appellant; Girdhar Govind and Noorun Nahar Firdausi, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—This application has been made by the defendant No. 2 under Order 8 Rule 1 read with Section 151 CPC for condensation of delay in filing the written statement. It is stated that defendant No. 2 filed written statement on 21.10.2003 vide diary No. 27431. The delay, if any, in filing the written statement occurred because the defendant had filed an application I.A. No. 9746/02 seeking further and better particulars. This application was being adjourned from time to time. The applicant by way of abundant caution filed written statement in 2003 and this application under Order 8 Rule 1 was filed on 2.4.2008.

2. The suit was filed on 5.6.2002 and order for service of notice was issued by this Court for all the defendants. The ex-parte injunction was passed by this Court on 5.6.2002 itself and plaintiff was given directions for compliance of Order 39 Rule 3 CPC. Defendant No. 2 put in appearance in the Court on 12.8.2002 in person and sought time for filing the written statement. Record shows that he was served on 9.7.2002 and took no steps for filing written statement before 12.8.2002. However, this Court granted 3 weeks' further time to the said defendant for filing the written statement and replies to the applications. Three weeks expired on 2.9.2002 but no written statement was filed by defendant No.

2 nor he filed any application seeking leave of the Court for filing of the written statement. The application I.A. No. 9746/2002 for better particulars was filed much after the expiry of time for filing written statement. However, the better particulars sought by the said defendant were of frivolous nature and this Court had dismissed the said I.A. vide order dated 4.4.2008 which was lying pending without being pressed by the defendant No. 2. The defendant No. 2 filed written statement without leave of the Court on 21.10.2003 i.e. after more than one year and two months of the receipt of summons and that too without an application for condensation of delay. Thus the written statement was not taken on record and case proceeded further in respect of the pleadings of other defendants and crossed the stage of admission/denial and reached the stage of framing of issues. The matter was fixed on 4.4.2008 for framing of issues when this application was made for condensation of delay in filing the written statement. I consider that the attitude of the defendant has been of total defiance of the law and dragging the case perpetually. In *Kailash Vs. Nanhku and Others*, Supreme Court observed that extension of time sought by the defendant from 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 the 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. The departure from the time schedule by Order 8 Rule 1 CPC can be allowed only under exceptional circumstances beyond the control of the defendant and such extension was necessary in the interest of justice. In the present case the defendant has in fact given no circumstances for not filing written statement from the date of service i.e. 9.7.2002 till he made application for better particulars and had also not explained the delay in filing of the written statement for one year and 2 months beyond the period of 30 days or 90 days and has given no reason why he did not move an application for filing the written statement on record for 5 years. In fact the written statement filed by the defendant on 21.10.2003 was no written statement in the eyes of law since it was filed without leave of the Court and the plaintiff is seeking permission to file written statement after 5 years and 8 months of receiving summons that also without giving any reasons for such a long delay.

3. I consider that the Court cannot allow such an application. Accordingly, the application under Order 8 Rule 1 CPC is hereby dismissed.

CS(OS) No. 1059/2002

List the suit for framing of issues on 19th August, 2008.