

(2008) 04 DEL CK 0008

In the Delhi High Court

Case No : IA No. 3121 of 2008 and CS (OS) No. 1896 of 1999

Rajneesh Goyal (since deased) through LRs. Smt. Usha Goel APPELLANT
and Others

Vs

DSJ Communications Ltd. RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, Order 8 Rule 10
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 22(1), 3

Citation : (2008) 04 DEL CK 0008

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

Bench : Single Bench

Advocate : Manoj Ahuja, for the Appellant; Sunit Atri and Preeti Dalal, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—This application has been made under Order 8 Rule 1 CPC seeking condensation of delay in filing the Written Statement on 3rd March, 2008 and is accompanied with WS. The application is dated 7th March, 2008.

2. Brief facts relevant for deciding this application are that a suit for recovery of Rs. 33,93,290/- was filed by the plaintiff against the Defendant on 23rd August, 1999. The suit came up for hearing before Court on 1st September, 1999 and directions were given for issuing summons to the Defendant for settlement of issues returnable for 9th December, 1999. Defendant could not be served initially, however, Defendant was served and put appearance on 4th July, 2000. Defendant did not file WS and instead made an application u/s 22(1) of Sick Industrial Companies (Special Provisions) Act, 1985 seeking stay of proceedings in the suit. This application remained pending because of death of plaintiff in between and LRs of plaintiff were brought on record. Vide order dated 3rd May, 2002 Defendant was directed to file up-to- date copy of the order sheet of the proceedings before BIFR in order to indicate the present status of the proceedings. Thereafter, Defendant did not appear on 29th October, 2002. On 26th February, 2003 Defendant informed the Court that reference was rejected

by BIFR however, the Defendant had preferred an appeal before the AAIFR. The case was adjourned from time to time and no WS was filed by the Defendant. The appeal before AAIFR, filed by the Defendant, was posted for hearing on 19th January, 2004. However, this Court vide order dated 17th November, 2003 adjourned the suit sine die with liberty to the parties to move the Court as and when a decision is taken by the Appellate Authority. On issuance of a notice by this Court parties appeared before the Court on 29th August, 2005 and informed that appeal before AAIFR was still pending. However, finding that there was no stay against the order of BIFR rejecting the reference, the case was revived and Defendant was asked to file WS by this Court vide order dated 21st March, 2007 within 30 days from that day. Parties were also asked to file all documents and complete the pleadings and the admission/denial of documents. Despite this specific direction, no WS was filed, instead Defendant filed a review of the order which was dismissed. Till 20th February, 2008, no WS was filed by the Defendant and more time was sought by Counsel for Defendant for filing WS which this Court did not allow and the matter was fixed for arguments. In between, present application was filed.

3. It is stated in the application that Defendant was a sick company and reference was filed before BIFR under Sick Industrial Companies (Special Provisions) Act in 1998. This reference was rejected by BIFR on the ground that Defendant company was not satisfying the basic criteria of performing any industrial activity of its own and was getting all its printing work done from outside on job work basis. Against this order Defendant preferred an appeal to AAIFR. AAIFR vide its order dated 9th November, 1999 remanded back the matter to BIFR for fresh consideration. Subsequent to the remanding back, BIFR took up the matter on 29th March, 2000 and inter alias gave directions that the recovery suits already filed against the company could be continued but no fresh suit should be filed or decrees, if any, obtained executed without prior approval of BIFR. The reference of the company before BIFR was finally rejected by BIFR on 26th September 2002. This order was challenged before the AAIFR and AAIFR vide its order dated 11th June, 2007 set aside the order of BIFR dated 26th September, 2002 and remanded the matter for fresh disposal. It is stated that this Court vide order dated 21st March, 2007 had directed the Defendant to file WS within one month, the Defendant preferred a Review Petition of this order which came up on various dates and ultimately was dismissed on 11th January, 2008. The Defendant's Counsel collected the copy of order passed in Review Petition on 12th February, 2008 and sought instructions from Defendant and sent WS to the Defendant Company. It took some time to Defendant Company to locate the documents and hence WS was filed in the month of March, 2008 along with the application. It is stated that in view of these circumstances WS be taken on record and delay in filing WS should be condoned. The applicant was entitled for condensation of delay since applicant was a sick industrial company.

4. A perusal of order dated 29th March, 2000 passed by BIFR would show that the Board had specifically recorded:

The recovery suits already filed against the company could be continued but no fresh suit should be filed or decrees, if any, obtained executed without prior approval of BIFR.

5. It is apparent that the present suit was already pending at the time when order was passed and even as per Board's directions the suit could continue. This order was passed by BIFR in presence of the Counsel for Defendant. Defendant, who was aware of the pendency of this suit and whose application u/s 22 of SICA was pending before the Court thus, should have filed WS to the suit after passing of this order within 30 days. Defendant did not chose to file WS. The question before BIFR in fact was altogether different. The order of BIFR shows that the main issue was whether Defendant, who claimed to be a publisher and printer of Dalal Street and used to get its entire printing work on job work basis, was covered under the Scheduled Industry of Printing.

6. The reference made to BIFR was ultimately dismissed by BIFR on 26th September, 2002. The order of BIFR reflects the conduct of the Defendant as under:

The OA reported in the hearing held on 3.7.2001, that they had appointed M/s Rao Srinivasan and Associates (RSA) to conduct on SIA of the company as directed by BIFR on 29.3.2000. The SIA, inter alia, investigated the details of diversion of funds by the company/management. The company did not submit the sworn affidavit as directed under para 10(b) of the proceedings dated 29.3.2000 and deliberately delayed submission of the affidavit for getting the protection of the Act. The company also delayed the submission of their reply to the objections raised in the SIA report and they were not sincere in proving their bonafides and were simply delaying the matters to take undue advantage of law. The Board, Therefore, permitted the secured creditors to file suit against the company also indicating specifically how the company had diverted the funds with necessary supporting evidence, if any action had been taken by them or any suit filed together with the date and details including the beneficiaries of the diverted funds.

7. The Board ultimately dismissed the reference with the following observations:

After carefully considering the matter as well as the reports submitted by the OA/ SIA, the Board has come to the conclusion that the company did not fulfill the definition of "industrial company" u/s 3(e) of the Act as it was not involved in the printing process which was covered under the First Schedule of IDRA. The Board also took note of the Auditor's remarks in this regard which corroborated the above statement. Accordingly, the Board dismisses the reference as "non-maintainable".

8. Despite the dismissal of the reference by the BIFR vide its order dated 26th September 2002, Defendant did not file WS even in 2002 and the suit continued to be adjourned. Considering the entire proceedings before BIFR and AAIFR and the fact that there was no stay, this Court gave directions to the Defendant to file

WS within 30 days from 21st March 2007 but Defendant did not file WS and instead made another attempt to drag the litigation.

9. Though the Defendant had preferred an appeal against the order dated 26th September 2002 of BIFR, but there was no stay of operation of the order of BIFR and AAIFR vide its order dated 11th June, 2007 only remanded back the matter to BIFR observing that the order dated 26th September, 2002 was passed ex-parte and issues relevant for deciding the reference filed by the company were not adequately addressed. The matter was remanded back for fresh disposal after hearing the parties. It is not the case of the Defendant that BIFR after remanding back of the case had stayed filing of any recovery suit or put any restriction on the creditors from recovering the dues.

10. The manner in which the Defendant company had conducted proceedings with BIFR and AAIFR shows that the only effort of the Defendant had been to drag the matter perpetually. It seems the same is the intention of the Defendant in this Court. This suit was filed in 1999 and now we are in 2008. The Defendant had filed WS after 9 years of filing of the suit and after 8 1/2 years of first appearance in the Court despite the fact that twice the reference of the Defendant before the BIFR was rejected, once in 1999, then in 2002 and Defendant was obliged to file WS. The Defendant did not file WS and took the plea of pendency of an appeal before AAIFR thereafter despite specific direction of this Court for filing WS within one month Defendant did not file WS.

11. The question which arises is whether the Court and law should be allowed to become tools in the hands of unscrupulous litigants, who are bent upon to see that whatever be the law and whatever be the provisions of CPC, they shall not allow the litigation to proceed. In the year 2001 CPC was amended by Parliament so that this playing of musical chair by the litigants should come to an end and the Courts should refuse to hear such litigants, who do not take the Courts seriously and do not file their WS in time. Law specifically provides that WS should be filed within 30 days of the receipt of summons and the Court was given power to extend this time up to 90 days that also for reasonable grounds. Beyond 90 days CPC did not provide for any extension of time by the Courts. Although procedural laws are handmaid of justice and are meant to promote the cause of justice and the aim of the Courts is to provide substantial justice to the parties but the procedural laws cannot be allowed to become a tool in the hands of litigants and using procedural law, a litigant cannot be allowed to defeat the ends of justice and pollute the stream of justice. If a case has to wait for 09 years for filing WS by the Defendant what kind of justice can be provided by the Courts and if the Court allows filing of WS after such a long time despite the fact that there was no impediment with the Defendant in filing WS all along, would that be justice? The Defendant after rejection of his reference twice by BIFR had all opportunities to file WS and to contest the claims of the plaintiff. The claim of the plaintiff in this suit was yet to be adjudicated by the Court and whether any amount was recoverable or not from the Defendant was to be decided by the

Court only after adjudication. However, taking shelter of one or the other excuse or making one or the other application, the Defendant saw to it that he did not file WS for all these years. Although Legislature has not put fetters on the power of the Court in extending time beyond 90 days but Courts cannot be oblivious to the fact that this discretion must be exercised only in exceptional cases where the delay in filing WS is due to such reasons which are beyond the control of the Defendant. Where a Defendant deliberately delays proceedings and deliberately adopts dilatory tactics in order to defeat the claim of the plaintiff, the Court should not exercise this discretion in favor of such a Defendant. In the present case, the efforts of the Defendant were only to see that it avoids filing WS and delays the proceedings as long as possible. The similar efforts of the Defendant have been noted even by BIFR in proceedings before it. I consider it is not a fit case where the Court should exercise discretion in favor of Defendant. Even in *Kailash Vs. Nanhku and Others*, relied upon by the Defendant Supreme Court has specifically observed that extension of time beyond 90 days was not automatic and the Court must be satisfied that there was sufficient justification for departure from their time limit fixed by the legislature and this discretion must be exercised cautiously. The application made by the Defendant is hereby dismissed.

CS(OS) No. 1896/1999

12. The plaintiff has filed this suit for recovery of Rs. 33,93,290/-. The case of the plaintiff is that the plaintiff had been supplied newsprint either to the Defendant directly or to the press on the instructions of the Defendant and the plaintiff used to raise a debit memo/note on the Defendant at the mutually agreed rates. The plaintiff used to maintain a current account in respect of Defendant in its books of accounts and as and when debit memo was raised, the amount was debited to the account and when payment was received the sum was credited into the account. Every year the balance amount was carried over to the next year thus, the account between the parties was a current and running account. The plaintiff wrote letters to the Defendant asking for the balance amount and confirmation of the account. On 13th June, 1996 Defendant made part payment and confirmed balance of Rs. 33,96,212.40 in the Statement of Accounts for the financial year 1996-97, which was carried over to 1997-98. During the period 1997-98, Defendant made the payment of Rs. 6,20,000/- leaving the balance of Rs. 27,76,212.40/-, which was carried over to 1998-99. Defendant again made part payment to the tune of Rs. 3,80,000/-, which was credited reducing the balance to Rs. 23,96,212/-. Thereafter, Defendant made no payment and a legal demand notice dated 11th January, 1999 was sent to the Defendant. The Defendant withheld the payment of this amount and did not make the payment despite notice and hence the suit has been filed by the plaintiff for claiming the balance amount of Rs. 23,96,212/- and interest, thereon which plaintiff added on yearly basis. In support of its claim, plaintiff filed ledger accounts and statement of accounts showing debits and credits and the different cheques received for years closing 31st March, 1996, 31st March, 1997, 31st

March, 1998 and 31st March, 1999 and also filed correspondence exchanged between the parties including the notice sent by the advocate of the plaintiff, which was received back undelivered.

13. I consider that Defendant has deliberately not filed WS to the claim of plaintiff and plaintiff was entitled to judgment under Order 8 Rule 10 CPC. The suit of the plaintiff is Therefore decreed for a sum of Rs. 23,96,212/- along with 10% interest thereon w.e.f. 1st April, 1997. Decree Sheet be prepared accordingly. File be consigned to the record room.