

(1996) 10 BOM CK 0036

In the Bombay High Court

Case No : Civil Revision Application No. 693 of 1996

Society Ltd.

APPELLANT

Vs

Smt. Mary Fernandes and others

RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 18

Citation : AIR 1997 Bom 208

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : M/s. F.T. Sikandar, instructed by M/s. Thakordas and Madgavkar, for the Appellant; V.Y. Sanglikar, S.G. Vakil and S.A. Gandhi, for the Respondent

Judgement

R.M. Lodha, J.—Heard learned counsel for the parties.

2. By the order dated 18-9-1996 the City Civil Court rejected the chamber summons took out by the present petitioner-plaintiff No.2 seeking condonation of delay in carrying out of amendment. Shorn of unnecessary details, on 8-3-95 the trial Court allowed the chamber summons took out by the plaintiff seeking amendment in the plaint. In that order no date was fixed for carrying out amendment. Obviously in absence of any specific time prescribed in the order, under Order 6, Rule 18 of the Civil Procedure Code, the amendment was required to be carried out within fourteen days from the date of the order. However, it appears that on 26-3-96 the Court below granted time to the plaintiff to carry out amendment on 24-4-96. It is common ground of the learned counsel for the parties that on the stipulated date the amendment was not carried-out and plaintiff sought adjournment which was granted and case was adjourned to 27-6-96. On that day also the amendment was not carried out, nor any prayer was made for extension of time and case was adjourned to 15-7-96. On that day also amendment was not carried out and plaintiff sought adjournment for arguments and matter was fixed on 30-7-96. It appears that then the present chamber summons taken-out by plaintiff No.2 seeking condonation of delay in

amendment.

3. On the basis of the aforesaid facts, the trial Court formed the opinion that the amendment was not carried out deliberately and chamber summons for condonation of delay in amendment was taken-out only after the application for re-opening of the case stood rejected finally.

4. I am unable to appreciate the reasons given by the trial Court once the amendment application was allowed by the trial Court, there was no reason why the plaintiff would not have carried out the amendment which was allowed. It, though, seems that petitioner was not vigilant in carrying out the amendment within time and on few dates of hearing despite extension granted by the trial Court, the Plaintiff did not carry-out amendment and thus there was some negligence on the part of Plaintiff.

5. In my view, since the amendment has been allowed by the Court below holding that such amendment was necessary to decide real controversy between the parties because of some inaction in not carrying out amendment within time, the Plaintiff should not be deprived of the amended pleading. The inconvenience caused to Defendant-1(b) could be compensated by awarding suitable cost. The trial court is expected always to exercise the discretion which advances the cause of justice and does not lead to avoidable litigation by way of revision and appeal. The procedural law should not be applied so rigorously and with hypertechnical stress that it breaks the strings of substantial justice. After all procedure is handmaid of justice and not its master. The amendment as allowed on 8-3-96 and time as granted by the trial Court to amend the pleadings by 24-4-96. I have already set-out few dates subsequent thereto by which the amendment was not carried-out, but the conduct of the Plaintiff cannot be said to be so contumacious and gross, negligent or actuated with ulterior motive warranting rejection of chamber summons for extension of time in submitting amended plaint. Exercise of discretion by the trial Court, therefore, cannot be said to be in accordance with sound legal principles.

6. The learned counsel for a Plaintiff No. 2-Petitioner herein candidly submitted that her client is prepared to pay cost of Rs. 5000/- to the Defendant No. 1(b) for the inconvenience caused because of this delay and that within one week from today the amendment allowed on 8-3-96 shall be carried-out.

7. Accordingly, Civil Revision Application is allowed. The order passed by the Court below on 18-9-96 is set aside. The chamber summons took out by Plaintiff No. 2, resultantly, stands allowed, and, he is granted seven days time from today to carry-out necessary amendment allowed by the trial Court vide its order dated 8-3-96 subject to the payment of costs of Rs. 5000/- to Defendant No. 1(b) before carrying out amendment. In case of default, the order allowing amendment on 8-3-96 shall stand revoked and it would be open to the Court to proceed in accordance with law on the basis of the original pleadings.

8. Revision allowed.