

(2004) 09 DEL CK 0066
In the Delhi High Court
Case No : I.A. No. 3246 of 2003

Texstyles and Others

APPELLANT

Vs

Kiran Overseas Export Ltd. and Another

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14, Order 8 Rule 1, Order 8 Rule 1(2), Order 8 Rule 1(5), Order 8 Rule 10
Delhi High Court (Original Side) Rules, 1967 — Rule 3

Citation : AIR 2005 Delhi 162

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Rajinder Wali, for the Appellant; Bhuvan Guglani, for the Respondent

Judgement

1. The question to be decided is whether the defendant has successfully disclosed a case for the exercise in its favor of the discretion possessed by this Court in its favor under Order 8, R. 1 of the CPC as amended with effect from 1-7-2002, and in particular whether any discretion remains reposed with the Court after the expiry of ninety days from the date of service of summons on the defendant. The relevant provisions prior and post the amendment read as follows :

Old Present

R.I. Written statement. (1) The defendant shall, at or before the first hearing or within such time as the Court may permit. present a written statement of his defense.

2. Save as otherwise provided in R. 8-A, where the defendant relies on any document (whether or not in his possession or power) in support of his defense or claim for setoff or counterclaim, he shall enter such documents in a list, and shall,

(a) if a written statement is presented, annex the list "to the written statement :

Provided that where the defendant, in his written statement, claims a setoff "or makes a counterclaim based on a document in his possession or power, he shall produce it in Court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement;

(b) if a written statement is not presented. present the list to the Court at the first hearing of the suit.

3. Where any such document is not in the possession or power of the defendant. he shall, wherever possible, state in whose possession or power it is.

4. If no such lists is so annexed or presented, the defendant shall be allowed such further period for the purpose as the Court may think fit.

5. A document which ought to be entered in the list referred to in sub-rule (2), and which is not so, entered, shall not, without the leave of the Court, be received in evidence on behalf of the defendant at the hearing of the suit.

(6) Nothing in sub-rule (5) shall apply to documents produced for the cross examination of plaintiffs witnesses or in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or handed over to a witness merely to refresh his memory.

(7) Where a Court grants leave under sub-rule (5), it shall record its reasons for so doing, and no such leave shall be granted unless good cause is shown to the satisfaction of the Court for the non-entry of the document in the list referred to in subrule(2).

R. 1 Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defense :

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

R. 1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.- (1) Where the defendant bases his defense upon a document or relies upon any document in his possession or power, in support of his defense or claim for set-off or counterclaim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it Is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be

received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents -

(a) produced for the cross examination of the plaintiffs witnesses.

(b) handed over to a witness merely to refresh his memory.

2. Broadly stated the amendment circumscribes and limits the period within which the written statement can be filed. Montesque's theory on the separation of the power between the Parliament/Legislature, the Executive and the judiciary is the foundation on which our Constitution has been construed. These frontiers cannot be violated and the territories of each of the three constituents of governance should not be trespassed upon by the others. It is trite to state that the unambiguous language of a statute should be given effect to without restraints. In the event that the statutory provision proves to be too stringent Parliament is responsible for its abrogation or amendment in order to alleviate its empirically evident harshness. If mutual respect is not given to the provinces of each of the others, the constitutional framework may be irreversibly and irretrievably weakened.

3. In Dr. J.J. Merchant and Others Vs. Shrinath Chaturvedi, the Apex Court was primarily concerned with the argument that because of the delay in disposing of a complaint under the Consumer Protection Laws the party should be relegated to seeking relief in a Civil Court. However, the Apex Court, through a Bench comprising three learned Judges, after reproducing the present provisions, observed that--

15. Under this rule also, there is a legislative mandate that written statement of defense is to be filed within 30 days. However, if there is a failure to file such written statement within stipulated time, the Court can at the most extend further period of 60 days and no more. Under the Act, the legislative intent is not to give 90 days of time but only maximum 45 days for filing the version by the opposite party. Therefore, the aforesaid mandate is required to be strictly adhered to.

17. In view of the aforesaid provisions, the Commission can certainly refer to Order 7, R. 14 which provides that where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list; and shall produce it in the Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. It appears that this mandatory requirement is not followed and thereafter, there is complaint of delay in disposal. Similarly, in case of written statement under Order 8, R. 1-A, defendant is required to produce the documents relied upon by him when written submission is presented. The Commission can always insist on production of all documents relied upon by the parties along with the complaint and the defense version.

It is true that these observations of the Hon"ble Supreme Court are in the nature

of obiter dicta but they are binding on all other Courts in India.

4. Independent of a reference to this case, in *Savitha Gupta v. Smt. Nagaratha*, AIR 2003 Kan 426 : AIR 2003 HCR 2028 it has been held that the defendant loses his right to file a written statement after the expiry of the statutory period and its acceptance would defeat the statutory mandate. This precedent has gone to the extent of holding that the inherent powers reposed in the Court u/s 151 cannot be employed to allow the filing after the statutory period.

5. It is necessary to refer to the Delhi High Court (Original Side) Rules, 1967 applicable to this Court since these will hold sway over the provisions of the CPC by virtue of the powers conferred by Section 122 and 123 thereof read with Section 7 of the Delhi High Court Act, 1966. The Full Bench of this Court had ruled in favor of the supremacy of the Rules promulgated by it over the provisions of the C.P.C. in *Print Pak Machinery Ltd. Vs. Jay Kay Papers Converters*, , and the question is no longer rest integra since this decision has not been disturbed for a quarter of a century. Reference is required to be made to Chapter VI, Rule 3 of the Delhi High Court (Original Side) Rules, 1967 which reads thus.--

3. Extension of time for filing written statement.-- Ordinarily, not more than one extension of time shall be granted to the defendant for filing a written statement provided that a second or any further extension may be granted only on an application made in writing setting forth sufficient grounds for such extension and supported, if so required, by an affidavit.

6. It ought not to be overlooked that this Rule was drafted in the context of the previous unamended procedural regime where time for filing the Written Statement was dealt with on the basis of the occasion and had not been limited in terms of time. The erstwhile Order VIII Rule 1 CPC stated that the Written Statement shall be filed at or before the first hearing or within such time as the Court may permit. The above Rule 3 applicable to the Delhi High Court palpably endeavored to restrict the discretion that had been reposed by the Code in the Court even in the context of occasions to number of opportunities. It did not attempt to amplify it. The Rule, even if it continues to retain legal efficacy, which I seriously doubt it does, cannot reasonably be construed to remove or enlarge the embargo or limit placed by the amendment on jural discretion. Even as I read the Rule, I find it requires the Court to grant extensions, one or several, provided they are within the ninety days period postulated by the present Order VIII, Rule 1, CPC. In other words, where the CPC placed no embargo or fetters on the Court pertaining to the grant of number of opportunities for filing the Written Statement, the Rules contained a self-imposed restriction on the open-ended procedural regime. Once Parliament, on the recommendation of the Law Commission given after great deliberation, puts a outer limit, a fortiori, Rule 3 mandates strict compliance with the stated period. The Court is enjoined to adopt an harmonious approach in interpreting the Code and its own Rules. The latitude and laxity shown by the Court to defendants who have made it a practice

to delay legal proceedings must be reversed lest the legal system is brought to grinding and painful halt.

7. Furthermore, Sections 122 and 123 of the CPC empower the High Court to frame its own Rules, but until this exercise is undergone, the provisions of the CPC continue to apply. Even if Rule 3 enabled the Court to limitlessly extend time for the filing of the Written Statement it has now been overridden by the amendment. Till such time as the High Court does not draft and enforce fresh Rules which would have the calculated object of nullifying this very laudable legislation, the CPC as amended must be implemented. It is indeed presumptuous to assume that the High Court will venture on a path of collision or confrontation to ward Parliament; at least I would be loathe to do so since no circumstances warranting it have manifested themselves. I find no justification to resist or procrastinate the implementation of the present/amended Order VIII, Rule 1 of the CPC on the expectation or anticipation that this Court would enforce contrary Rules, enlarging time open-endedly though the present procedure has provided sufficient elasticity in that time may on repeated occasions be extended up to ninety days.

8. From the enquiries made from the Registry it is revealed that at least since December 2002 onwards the amendment has been given effect to as is evident from the summons which are being issued on fresh suits. If this High Court was of the view that the Rules in variance to the extant provisions of the CPC needed to be brought in, steps would have been taken in these two years. The summons reads as follows :

To

.....

WHEREAS the plaintiff has instituted a suit against you for You are hereby summoned to appear in this Court in person or by a pleader duly instructed and able to answer all material questions relating to the suit or who shall be accompanied by some person able to answer all such questions on..... at 10-30 a.m./11-00 a.m. before Court or Joint/ Deputy Registrar of this Court to answer the claim and further you are hereby directed to file within 30 days from the date of service a written statement in your defense and to produce on the said day all documents in your possession or power upon which your defense or claim for set-off or counter-claim and where you rely on any other document whether in your defense or claim for set-off or counter-claim, you shall enter such documents in list to be annexed to the written statement.

Take further notice that. I.A. No.....dt..... (copy enclosed) is also fixed before Court on.....

Take notice that in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

Given under my hand and the seal of this Court, this the..... day
of

Admn. Officer Judl. (O)

for Registrar.

9. Now let me revert to the case in hand. On 31-1-2002 the Defendants had been directed to file their Written Statement within six weeks, but they failed to do so even till the hearing on 6-8-2002, by which time the amendment to the CPC had come into force. Nevertheless two weeks further time had been granted by the Joint Registrar, arguably contrary to law. Despite the latitude granted, the Written Statement was not filed before 15-3-2003 although this should have been done by 21-8-2002. Although I am of the view that no power remained to condone delay beyond 21-8-2002, the reasons for justifying the delay need to be stated since it will manifest that Defendants as a class have taken the amendment as lightly as they had earlier taken the Court repeated indulgence. In the application it is pleaded that the Defendant intended to "file their counterclaim along with the Written Statement for which all documents relied upon by the defendants were required to be filed. That the defendants submit that earlier the defendant No. 1 had filed a reference to the BIFR under SICA Act which was rejected by the BIFR. That while making reference to the BIFR, the defendant handed over all the papers/ documents required for filing the reference to their counsel. The defendant approached the counsel and took delivery of all documents required to be filed by the defendant in the present suit. That in these circumstances, the written statement could not be filed within time. The delay in filing the Written Statement is neither intentional nor deliberate due to the reason stated above". I find the application disdainfully bereft of material particulars. When was the BIFR approached and when was the Reference dismissed ? Who was the lawyer before BIFR and when were the documents received ? I am of the considered view that no grounds have been disclosed to condone the delay in filing the written statement and the application is dismissed. The written statement shall be taken off the record. CS/(OS) No. 714.2001

10. Mr. Batra makes an oral prayer for the deletion of defendant No. 2 who has been palpably imp leaded by virtue of his being the Managing Director of defendant No. 1. defendant No. 1 is a duly incorporated entity under the Companies Act, 1956. I am satisfied that defendant No. 2 ought to be deleted from the array of parties. Orders accordingly.

11. Amended Memo of parties be filed by the plaintiff within one week.

12. No Written Statement has been legally filed. The suit can be decreed under Order VIII, Rule 10, CPC but in view of the facts disclosed in the counter-claim, I consider it appropriate to order the plaintiff to lead evidence by way of affidavits which should be filed within eight weeks from today. It is my view that this suit should be tried along with the counter-claim. Written statement to the counter-

claim be filed by the plaintiff within thirty days from today. Replication within thirty days thereafter. Parties shall file documents along with their respective pleadings.

13. The Defendant has filed a counterclaim which is directed to be numbered and segregated from the record, but shall be heard along with this suit. Since the counter-claim is for Rs. 24,35,881.38 this suit be not transferred to the District Court.

14. List the matter before Joint Registrar for admission/denial and for exhibition of documents on 11-2-2005.