
(2016) 08 CAL CK 0087

In the Calcutta High Court

Case No : GA No.2431 of 2016 and CS No.38 of 2014

Trf Limited

APPELLANT

Vs

Damodar Valley Corporation

RESPONDENT

Date of Decision : 18-08-2016

Acts Referred:

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

Citation : (2017) 2 WBLR 622

Hon'ble Judges : I.P. Mukerji, J.

Bench : Single Bench

Advocate : Mr. Nirmalya Dasgupta, Mr. Sachin Shukla, Advocates, for the Appellant; Mr. Jaydip Kar, Mr. Subir Pal, Advocates, for the Respondent

Final Decision : Allowed

Judgement

I.P. Mukerji, J. — The Court: Mr. Dasgupta opposes this application made by the first defendant No.1 for a week's extension to file their written statement. Time to file their written statement expired on 5th August 2016.

2. The Master's Summons was signed by the Master on 12th August, 2016. The petition in support of it was verified on 10th August, 2016.

3. I was referred by Mr. Dasgupta to a three Judges' Bench decision of the Supreme Court in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. reported in AIR 2016 Supreme Court 86. After consideration of a number of judgements pronounced by the Court, it was pleased to observe and hold as follows in paragraphs 4, 5, 6, 16 and 18 of the judgement :-

"4. The question arose in the case of Dr. J.J. Merchant v. Shrinath Chaturvedi, (AIR 2002 SC 2931 : 2002 AIR SCW 3424) (supra) whether the Forum can grant time beyond 45 days to the opposite party for filing its version. After considering the afore stated section in the light of the object with which the Act has been enacted, the three-Judge Bench of this Court came to the conclusion that in no case period beyond 45 days can be granted to the opposite party for filing its

version of the case.

5. Without discussing the afore stated three-Judge Bench Judgment in detail, we now turn to another judgment which has been referred to by the referring Bench. The other judgment which has been referred to is Kailash v. Nanhku & Ors.(AIR 2005 SC 2441 : 2005 AIR SCW 2346) (supra), which pertains to Election Law. The issue involved in the said case was whether time limit of 90 days, as prescribed by the proviso to Rule 1 Order 8 of the Civil Procedure Code, is mandatory or directory in nature. The said issue had arisen in an election matter where the written statement was not filed by the concerned candidate within the period prescribed under the relevant Election Law and the issue was whether in the Election trial, delay caused in filing the written statement could have been condoned.

6. After considering the provisions of Order 8, Rule 1 of the Code of Civil Procedure, 1908 and several other judgments pertaining to grant of time or additional time for filing written statement or reply, in the interest of justice, this Court came to the conclusion that the provisions of Order 8, Rule 1 C.P.C. are not mandatory but directory in nature and therefore, in the interest of justice, further time for filing reply can be granted, if the circumstances are such that require grant of further time for filing the reply.

16. In the case of Dr. J. J. Merchant (supra), which is on the same subject, this Court observed as under:

"13. The National Commission or the State Commission is empowered to follow the said procedure. From the aforesaid section it is apparent that on receipt of the complaint, the opposite party is required to be given notice directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum or the Commission. For having speedy trial, this legislative mandate of not giving more than 45 days in submitting the written statement or the version of the case is required to adhered to. If this is not adhered to, the legislative mandate of disposing of the cases within three or five months would be defeated.

14. For this purpose, even Parliament has amended Order 8, Rule 1 of the Code of Civil Procedure, which reads thus:

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

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."

18. There is one more reason to follow the law laid down in the case of Dr. J.J.Merchant (AIR 2002 SC 2931 : 2002 AIR SCW 3424) (supra). Dr. J.J.Merchant (supra) was decided in 2002, whereas Kailash (AIR 2005 SC 2441 : 2005 AIR

SCW 2346) (supra) was decided in 2005. As per law laid down by this Court, while deciding the case of Kailash (supra), this Court ought to have respected the view expressed in Dr. J.J. Merchant (supra) as the judgement delivered in the case of Dr. J.J. Merchant (supra) was earlier in point of time. The afore stated legal position cannot be ignored by us and therefore, we are of the opinion that the view expressed in Dr. J.J. Merchant (supra) should be followed."

4. Dr. JJ Merchant's case was concerned with Section 13(2)(a) of the Consumer Protection Act, 1986 which gave power to the District Forum to direct the opposite party to give his "version of the case" within a maximum period of 45 days.

5. Kailash's case related to the maximum time that could be allowed to the defendant to file his written statement, in an election matter. The New India Assurance case was again in respect of the said issue arising out of the Consumer Act, 1986.

6. None of these cases concerned the power of Chartered High Courts with an independent set of rules governing inter alia filing of a written statement in a suit.

7. Order 8, Rule 1 of the Code of Civil Procedure reads as follows:-

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

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."

8. This High Court was the first High Court established in India. It was established by Charter on 14th May 1862. Letters Patent were issued on 28th December 1865 to regulate the procedure of this Court. Clause 37 of these Letters Patent conferred power on this High Court to make its own rules. In exercise of this power the Original Side Rules were framed.

9. Section 4 of the Code of Civil Procedure recognises this special status of this Court. It says that unless any provision in the Code specifically overrides any special law which includes the said rules, the special law would prevail. Section 4(1) is set out herein below:-

"4(1): In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force."

10. Article 225 of the Constitution of India confers rule making power on the High Court.

11. Section 129 of the Code vests power in the High Court to frame rules even

after enactment of the Code of Civil Procedure. Section 129 is inserted below:-

"129. Power of High Courts to make rules as to their original civil procedure. - Notwithstanding anything in this Code, any High Court [not being the Court of a Judicial Commissioner] may make such rules not inconsistent with the Letters Patent [or order] [or other law] establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code."

12. Now, may I come to the Original Side Rules. Chapter IX Rule 2 is in the following terms:-

"2. Written statements when not to be filed. No written statement of a defendant shall be filed unless an appearance has first been entered. No written statement or voluntary statement shall be filed, after the time limited for filing the same by the writ of summons, or any rule, or any order, as the case may be, has expired, except under an order obtained by summons in Chambers taken out prior to the expiry of such time."

13. These rules say that even after the time to file the written statement has expired, if an application is made to the Court before expiry of this time, the Court has the power to extend such time. The present application by the first defendant has been made immediately after the matter was mentioned before this Court, on 5th August 2016 within the time originally stipulated by this Court to the first defendant to file its written statement. On that day an advance copy of the written statement had been served on the plaintiff's Advocate on record.

14. Moreover I notice that section 148 of the Code of Civil Procedure which vests the Civil Court with the jurisdiction to enlarge time has not been touched by any manner, by the amendment of Order 8, Rule 1 of the Code.

15. In *Trivia India Telecom Ltd. v. Motorola Inc.* reported in AIR 2005 SC 514 the Supreme Court opined that Order 8, Rule 1 of the Code had no application to the Bombay High Court in the exercise of its original jurisdiction.

16. Following the reasons given by me above, I hold that Chapter IX Rule 2 of the Original Side Rules of this Court is separate and distinct from Order 8, Rule 1 of the Code. The amendment to Order 8, Rule 1 does not override the said provision in our rules. So, the rules have primacy. They vest power in the Court to extend the time to file the written statement, in the circumstances mentioned therein. Those circumstances, in my opinion, have been sufficiently met by the first defendant.

17. I am satisfied with the reasons given in paragraphs 4, 5, 6, 7 and 8 of this application for extension of time to file the written statement. In my view, if this extension of time is not granted to the defendant they would be deprived of putting forth their defence. The plaintiff in that event would have a very unfair advantage over them. For the ends of justice this time has to be allowed to the

defendant.

18. This application is allowed by passing order in terms of prayers (a) and (b) of the Master's Summons.

19. The plaintiff may file their additional written statement by 29th September 2016. Cross discovery by 11th November 2016; inspection of documents by 18th November 2016.

20. Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.