

(2022) 01 GUJ CK 0083

In the Gujarat High Court

Case No : R/Special Civil Application No. 15331 Of 2021

Unimed Technologies Limited

APPELLANT

Vs

Stratus Foods Private Limited (In Liqn)

RESPONDENT

Date of Decision : 21-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 141, 142
Code Of Civil Procedure, 1908 — Order 8 Rule 1
Arbitration And Conciliation Act, 1996 — Section 23(4), 29A
Commercial Courts Act, 2015 — Section 12A
Negotiable Instruments Act, 1881 — Section 138(b), 138(c)

Citation : (2022) 01 GUJ CK 0083

Hon'ble Judges : N.V.Anjaria, J;Aniruddha P. Mayee, J

Bench : Division Bench

Advocate : Megha Jani, S M Dave, Jaimin R Dave, Hirva R Dave

Final Decision : Allowed

Judgement

Aniruddha P. Mayee, J

1. The present Special Civil Application challenges the orders dated 11.01.2021, 24.03.2021 and 08.07.2021 passed by learned Principal Senior Civil

Judge, Halol below Exhs.11, 15, 16 and 17 respectively in Commercial Civil Suit No.1 of 2020 whereby the right of the petitioners herein to file the

written statement in the said suit has been closed on the ground of limitation in terms of the provisions of Order VIII Rule 1 of the Code of Civil

Procedure.

2. The brief facts leading to filing of the present Special Civil Application are as follows :-

2.1 That on 07.11.2020, Commercial Suit No.1 of 2020 came to be filed by the respondentâ€"plaintiff herein for recovery of Rs.7,32,297/- along with

18% interest. Accordingly, the summons were issued and came to be served on all the petitionersâ" defendants on 23.11.2020. The petitioners herein put in their appearance pursuant to the service of summons.

2.2 That the respondent filed an application below Exh.11 praying to close the right of the petitioners to file the written statement alleging that 30 days period to file the written statement as prescribed under Order VIII Rule 1 was over.

2.3 By order dated 11.01.2021 below Exh.11, the learned trial court was pleased to allow the application below Exh.11 and closed the right of the petitioners to file the written statement since it was not filed within the period of 30 days as prescribed under Order VIII Rule 1 of the Code of Civil Procedure.

2.4 That the petitioners filed an application immediately on the same day seeking to reopen their right to file the written statement. By order dated

24.03.2021, the said application below Exh.15 for reopening of their right to file the written statement came to be dismissed. The learned trial court

observed that after passing of the order below Exh.11 closing the right of the petitioners to file the written statement after expiry of 30 days as

prescribed, the advocate for the petitioners did not remain present on 04.02.2021 and 19.03.2021. The conduct of the petitioners and oral submission of

learned advocate for the petitioners that due to increasing cases of Covid-19 corona virus and impediment of second wave, the written statement

could not be filed within time did not find favour with the trial court.

2.5 Aggrieved, the petitioners thereafter preferred another application below Exh.16 dated 28.06.2021 seeking and praying to reopen their right to file

the written statement in view of second wave of Covid-19 having subsided. Pending the application below Exh.16, the petitioners moved another

application below Exh.17 making a prayer for reopening their right to file the written statement since no orders were passed on Exh.16 application.

Both applications Exh.16 and Exh.17 came to be decided by a common order dated 08.07.2021 whereby the learned trial court rejected the said

applications holding that the the petitioners had suppressed the fact about the order passed below Exh.15.

2.6 Aggrieved by the aforesaid three orders, the petitioners have preferred the

present Special Civil Application praying for the following reliefs :-.

â??(A) that the Honâ??ble Court be pleased to issue an appropriate writ, order or direction quashing and setting aside orders dated 11.01.2021,

24.03.2021 and 08.07.2021 passed by the learned Principal Senior Civil Judge, Halol below Exhibit 11, 15, 16 and 17 respectively in Commercial Suit

No. 1 of 2020 and be pleased to open the right of the Petitioners to file written statement in Commercial Civil Suit No.1 of 2020.

(B) that pending the hearing and final disposal of this petition, the Honâ??ble Court be pleased to stay operation, implementation and execution of

orders dated 11.01.2021, 24.03.2021 and 08.07.2021 passed by the learned Principal Senior Civil Judge, Halol below Exhibit 11, 15, 16 and 17

respectively in Commercial Suit No. 1 of 2020;

(C) that pending the hearing and final disposal of this petition, the Honâ??ble Court be pleased to stay further proceedings of Commercial Civil Suit

No. 1 of 2020 pending in the court of Principal Senior Civil Judge, Halol.

(D) For ad interim relief in terms of para (B) and (C);

(E) For costs;

(F) For such other and further reliefs as the circumstances may require.â??

3. Learned advocate Ms. Megha Jani appearing on behalf of the petitioners submitted that the learned trial court erred in closing the right of the

petitioners to file their written statement to the suit and totally ignored the judgment of the Honâ??ble Supreme Court in Suo Motu Writ (Civil) No. 3

of 2020 whereby the Honâ??ble Apex Court had on 23.03.2020 directed extension of the period of limitation in all the proceedings before all the

courts/tribunals with effect from 15.03.2020 till further orders. The period of limitation for filing the written statement stood extended in view of the

order of the Honâ??ble Supreme Court and the petitionersâ?? right to file the written statement within the limitation period of 30 days stood

extended till further orders. However, the learned trial court committed an error and applied the law of limitation, thereby closing the right of the

petitioners to file their written statement and defend the suit. It was further submitted that even without prejudice to the above submission assuming

without admitting that the limitation period of 30 days available under Order VIII Rule 1 of the Code of Civil Procedure had expired on 22.12.2020,

even then the application below Exh.15 seeking permission to file the written statement ought to have been allowed in the interest of justice since the said application was made before the expiry of extendable period of 120 days. It was prayed by learned advocate Ms. Jani that the impugned orders dated 11.01.2021, 24.03.2021 and 08.07.2021 below Exhs. 11, 15, 16 and 17 in Commercial Suit No.1 of 2020 be set aside and the petitioners be allowed to file their written statement in the said suit.

4. Per contra, learned advocate Mr. Jaimin R. Dave appearing for the respondent / plaintiff submitted that in the case of Sagufa Ahmed and ors. vs.

Upper Assam Polywood Products Private Limited and ors. reported in (2021) 2 SCC 317, the Honâ??ble Supreme Court has held that the order

extending the period of limitation was intended to benefit the vigilant litigation who were prevented due to pandemic and lock-down from initiating the

proceedings within the period of limitation prescribed by general or special laws. That in the present case, the said observation will be relevant since

despite number of opportunities granted to the petitioners to file the written statement, for the reasons best known to them, they did not choose to file

the written statement on the subsequent days of hearing. It was submitted that such a conduct of the petitioners amounted to waiver of order dated

23.03.2020 passed by the Honâ??ble Apex Court extending the limitation under general law.

4.1 It was submitted that in the present case, the summons were admittedly served on 23.11.2020 and thereafter on 04.12.2020, the petitioners

appeared through their advocate and filed the VP. The Advocate for the petitioners also undertook to file their written statement on the next date,

however on 23.12.2020, on the next date, did not appear in the proceedings. Accordingly, the matter was kept on 11.01.2021. On that date of hearing

also, despite three calls, the petitioners did not appear and therefore, the advocate for the present respondent/plaintiff moved an application below

Exh.11 to close the right to file the written statement which was allowed by the learned trial court. It was further submitted that on the same date, the

advocate for the petitioners filed an application below Exh.15 to reopen the right to file the written statement, but on the said date, the advocate for the

petitioners did not keep the written statement ready to be filed in the court.

4.2 It was further submitted that therefore from 23.11.2020 to 11.01.2021 i. e.

40 days, the petitioners though had appeared before the learned trial court through their advocate but chose not to file their written statement when they were obligated to file the same within 30 days from the date of service of summons as per the provisions of Order VIII Rule 1 of the Code of Civil Procedure. It was submitted that even thereafter on 04.02.2021 and 19.03.2021, the petitioners did not appear on these two days of hearing. On 24.03.2021, even after 120 days from the service of summons, the petitioners herein did not keep their written statement ready to file in the trial court and therefore, under these circumstances, the petitioners' application below Exh.15 was also rejected by the learned trial court.

4.3 It was next submitted that thereafter on 28.06.2021, the petitioners filed an application Exh.16 i.e. 210 days after the service of summons. The petitioners filed another application below Exh.17, but even with these applications, the petitioners herein failed to annex the written statement or place the same before the trial court with a prayer to take the same on record. That the petitioners finally executed and submitted their written statement only on 08.07.2021 i.e. after 215 days of service of summons. In this view of the matter and the judgment of the Hon'ble Supreme Court in case of Sagufa Ahmed (supra), it is clear that on account of their conduct, the petitioners herein cannot claim to be vigilant litigants who were prevented due to pandemic and lock-down from filing their written statement in the trial court. It was submitted finally that the orders passed below Exh.11 dated 11.01.2021, Exh.15 dated 24.03.2021 and Exh.16 & 17 dated 08.07.2021 should be upheld and no relief be granted to the petitioners to place their written statement on record.

5. We have heard learned advocates for the respective parties at length as well as perused the documents on record.

6. The Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No.3 of 2020*, titled as *'In Re: Cognizance for Extension of Limitation'*, passed order dated 23.03.2020 which reads as under:

'This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid- 19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under

Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals

across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed

under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this

Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within

the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective

jurisdiction. Issue notice to all the Registrars General of the High Courts, returnable in four weeks.â?? (Emphasis supplied)

7. It is seen that on 11.01.2021, when the right of the petitioners to file the written statement was closed by the learned trial court, on the said date, the

order passed by the Honâ??ble Supreme Court was in force and the period of limitation to file the written statement within a period of 30 days from

the date of service of summons/notice under Order VIII Rule 1 of the Code of Civil Procedure stood extended till further orders. The learned trial

court has allowed the application of the respondent/plaintiff closing the right of the petitioners/defendants to file the written statement as per the

provisions of Rule VIII Rule 1 of the Code of Civil Procedure. No other reason has been given to close the right of the petitioners to file the written

statement. The said order dated 11.01.2021 is directly in breach of order dated 23.03.2020 passed by the Honâ??ble Apex Court and therefore,

cannot be sustained in law.

8. That thereafter, on 08.03.2021, the Honâ??ble Supreme Court passed the following order :-

â??1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand

excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between

15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and

(c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.

9. We further observe that even when the impugned order dated 24.03.2021 was passed by the learned trial court disposing of the application under

Exh.15, the order of the Honâble Apex Court was in force and the benefit of limitation was still available to the petitioners herein. Therefore, the learned trial court once again fell in error while rejecting the application of the petitioners to reopen their right to file the written statement.

10. That, thereafter, another order dated 27.04.2021 came to be passed in Misc. Application No. 665 of 2021 in Suo Motu Writ (C) No.3 of 2020 by the Honâble Supreme Court in view of second surge in Covid-19 cases. It reads as follows :-

We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigantâ"public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th

March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial

proceedings, whether condonable or not, shall stand extended till further orders.

It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under

Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of

Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits

(within which the court or tribunal can condone delay) and termination of proceedings.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding

order within the meaning of Article 141 on all Courts/ Tribunals and Authorities.â??.

11. That thereafter, the petitioners moved two more applications below Exhs. 16 and 17 praying for similar relief which were also dismissed by the

learned trial court. While dismissing these two applications in its common order dated 08.07.2021, the learned trial court did note the contention of the

petitioners in respect of the order passed by the Honâ??ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020, titled as â??In Re:

Cognizance for Extension of Limitationâ??, but went on to erroneously hold that the same was not applicable to the case in hand. The learned trial court

wrongly held that considering the entire facts even though the judgment of the Honâ??ble Supreme Court extending the limitation was binding on the

trial court, still considering the record & proceedings, it did not find any sufficient and cogent reason to allow the same. Accordingly, the said

applications vide Exhs. 16 and 17 came to be rejected. We find that even on 08.07.2021, the benefit of extension of limitation was available to the

petitioners herein to file their written statement.

12. Thus, it is seen that all throughout till passing of the impugned orders, the orders of the Honâ??ble Apex Court extending the period of limitation

prescribed under general law on limitation or under special laws was in force and was binding within the meaning of Article 141 of the Constitution of

India. The learned trial court could not have closed the right of the petitioners to

file the written statement on the ground that the period of limitation of 30 days under Order VIII Rule 1 had expired since the same stood extended in view of the orders of the Honâ??ble Apex Court. Thus, the learned trial court fell in grave error in not following the order of the Honâ??ble Apex Court more so while taking note of the same in its order dated 08.07.2021.

13. We further take note that by order dated 23.09.2021, the Honâ??ble Apex Court extended the period of limitation in all the proceedings before the courts and the tribunals with effect from 15.03.2020 till 02.10.2021 and further directed that the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from the said date. That in view of the aforesaid order, the limitation to file the written statement will accordingly stand extended.

14. Accordingly, we set aside the impugned orders dated 11.01.2021, 24.03.2021 and 08.07.2021 passed by learned Principal Senior Civil Judge, Halol below Exhs.11, 15, 16 and 17 respectively in Commercial Civil Suit No.1 of 2020. We further hold that the petitioners are entitled to the benefit of extension of limitation in terms of order dated 10.01.2022 passed by the Honâ??ble Apex Court in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020 In Re: Cognizance for Extension of Limitation for filing their written statement. We accordingly direct that the written statement of the petitioners herein be taken on record on the next date of hearing before the trial court. The matter shall thereafter be proceeded expeditiously and in accordance with law.

15. For the aforesaid reasons, the present Special Civil Application is allowed. There shall be no order as to costs.