

Trf Limited Vs. Damoder Valley Corporation and Ors.

Trf Limited Vs. Damoder Valley Corporation and Ors.

SooperKanoon Citation : sooperkanoon.com/110523

Court : Kolkata

Decided On : Jul-19-2017

Judge : Sahidullah Munshi

Appellant : Trf Limited

Respondent : Damoder Valley Corporation and Ors.

Judgement :

IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction
ORIGINAL SIDE GA1940of 2017 WITH CS38OF 2014 TRF LIMITED Versus
DAMODER VALLEY CORPORATION & ORS.BEFORE: The Hon'ble JUSTICE
SAHIDULLAH MUNSHI Date : 19th July, 2017.

For Plaintiff/ Respondent: Mr.Nirmallya Dasgupta, Advocate For Defendant/
Petitioner: Mr.Joydeep Kar, Sr.Advocate The Court :- GA1940of 2017 has been
filed by the defendant No.1 Damodar Valley Corporation, constituted under Indian
Electricity Act, 2003, seeking extension of time to file additional pleadings.

Such extension has been prayed for a period of four weeks from the date.

On the prayer of the plaintiff for amendment of the plaint an order dated 7.2.2017
was passed by this Court holding, inter alia, that the amendment was
consequential in nature and, therefore, the application for amendment was to be
allowed.

The application for amendment was allowed subject to objection of limitation which was kept open to be raised in the additional pleadings.

Such leave was granted by the Court keeping in view the submissions of Mr.Kar that claim on account of damages made by the plaintiff was expressly barred by the laws of limitation as the contract was terminated on 24.1.2014 whereas the summons was taken out on 25.1.2017 thereby causing delay of two days more than the period within which the plaintiff ought to have made such claim.

By the said order dated 7.2.2017 this Court allowed plaintiff to file amended plaint within a timeframe and the defendant was granted time to file additional written statement within a period of six weeks from the date of service of a copy of the amended plaint upon the defendant.

Mr.Nirmallya Dasgupta, learned Counsel appearing for the plaintiff has strenuously opposed the application filed by the defendant No.1 and submitted that by virtue of non filing of the additional written statement within the time frame fixed by the order dated 7.2.2017 a valuable right has accrued to the plaintiff which cannot be taken away by virtue of the extension if granted by this Court on the application of the defendant No.1.

Mr.Dasgupta submits that according to the provisions of order 8 r.

1 the time is mentioned for filing of written statement so also Civil Procedure Code hereinafer called the code specifies the time for filing additional written statement upon the plaint being amended.

According to Mr.Dasgupta no specific denial is made within the meaning of Rule 5 under Order 8, the party having not filed such written statement or additional written statement the plaintiff makes gain out of it and the right which has accrued in favour of such party cannot be disturbed.

Mr.Dasgupta has also submitted that in view of Section 148 of the said Code a bar has been created on the Court from extending time where the Court has already fixed a time for doing certain thing.

In the present case, this Court allowed the defendant No.1 to file additional written statement within a period of six weeks.

According to Mr.Dasgupta since six weeks has expired then a right has been accrued in his clients favour and that cannot be disturbed by any means particularly in view of Section 148 of the Code which says that Court can extend the time to a maximum of 30 days as has been amended by virtue of the amendment of Code in 2002.

Therefore, according to Mr.Dasgupta even if Court feels it proper to extend the time this cannot be done in view of the bar created under Section 148 of the Code.

Mr.Dasgupta, further submits that in view of the decision reported in AIR 2016 SC (New India Assurance Co.Ltd.V.Hilli Multipurpose Cold Storage PVT.Ltd.) the Court cannot extend the time for filing written statement.

He specifically submits that in a decision reported in 2005(4) SCC480 the Honble Apex Court held that provisions of Order 8 r.

1 is directory and not mandatory but by virtue of the latest decision in the case of New India Assurance (Supra) the situation has altered although the decision in New India Assurance Co.has not been passed touching the provisions of order 8 r.

1. He submits that this relates to both the principles underlying Order 8 r.

5 and the principle relating to filing of written statement within a specified period of time.

He has given much emphasis in the decision reported in 2005(4) SC where the Honble Court had occasion to deal with the provision of Order 8 Rule 1 and the recent decision in the case of New India Assurance has distinguished the judgment reported in 2005(4) SCC480 on the issue of filing of written statement under the provisions of Order 8 r.

1, and thus, according to him, there is no scope for this Court to extend the time for filing additional written statement in the present case.

Mr.Dasgupta further relies on a decision in the case of M.

Venkataramana Hebbar (Dead) By LRs.Versus M.

Rajagopal Hebbar And Others reported in 2007 (6) SCC401 on the issue of filing of written statement.

This case is based on the fact whether written statement has not been filed to deny the definite assertions of party and consequences thereof.

Court held that if averments made in the plaint has not been traversed by a party the consequence of the rules under Section 58 of the Evidence Act is to be followed meaning thereby that in absence of denial it would be deemed that the pleading has been admitted by the party against whom such pleading is made.

Both the judgments placed by Mr.Dasgupta relates to filing of the written statement and the consequences thereof in case of non filing of the written statement.

It is true that Order 5 r.

5 gives a clear picture as to what would be the fate of the suit in the event the opponent has not denied the averments made by the plaintiff but the question is whether principle of order 8 r.

5 has to be applied in the interlocutory stage of a suit or is to be applied at the final hearing after the trial is completed.

Mr.Kar in support of his application has reiterated that he seeks four weeks time to enable his client to file his additional written statement which was already permitted by the Court but for the reasons explained in the petition itself he seeks further time to file additional written statement.

In paragraph 6 of the application under consideration it has been mentioned that on 12.

4.2017 the legal department of the defendant No.1 verbally instructed the Advocate on record to file an application for extension of time to file additional

pleadings against the amended plaint.

Since the plaintiff claimed huge damages, the defendant No.1 could not collect all documents from the project site and the officer who is dealing with the matter could not provide necessary instructions and documents to prepare the additional pleadings.

Accordingly, it is prayed that four weeks time may be granted to enable Mr.Kars client to file additional written statement and the delay, if any, made in filing the additional pleading be condoned.

Mr.Kar, however, submits that in spite of all due diligence his client could not prepare additional written statement within the time mentioned in the aforesaid order dated 7.2.2017.

I have heard learned Counsel for the plaintiff and the defendant No.1 extensively and have gone through the materials on record.

It appears that provisions of Order 8 r.1 or Order 8 r.5 is not applicable in the present case.

The decision cited by Mr.Dasgupta based on the issue of filing of written statement and consequence of non filing thereof under Order 8 r.1 or Order 8 r.5 can not have any bearing in the fact of the present case.

In this case the written statement was already filed and after that an amendment application was taken out which was allowed by allowing the defendant to file additional written statement.

However, when an application for amendment is allowed it is the duty of the Court to allow the defendant to file additional written statement which is provided under Rule 18 of Order 6.

The amended provisions of Rule 18 of Order 6 says that if a party who has obtained an order for leave to amend does accordingly within the time limit fixed for that purpose by the order or if the time is thereby limited within fourteen days from the date of the order, the party shall not thereafter be permitted to amend

after the expiry of such limited time as aforesaid or within such 14 days, as the case may be, unless the time is extended by the Court.

In the present case it is undisputed fact that amendment application was allowed.

Defendant was permitted to file additional written statement within a period of six weeks from the date, when he would be served with the copy of the amended plaint.

It is the case now that such time has expired and the defendant to showing his bona fide has come before this Court to get an order of extension so that he can file his additional written statement.

It is also not the case of the plaintiff that he was very prompt in bringing to the notice of the Court that having regard to the expiry of time to file Additional written statement and the same having not been filed, the suit be placed for examination of witness and to proceed for final decision, rather the plaintiff was watching over the fate of defendants application, which was affirmed on 8.5.2017 and notice of motion was served on 14.6.2017.

Whether a Court is powerless to extend such time or not the issue to be decided in this application.

Rule 18 of Order 6 implies that Court is having certain discretion to exercise in case of non filing of additional written statement within the time fixed by the Court.

in the present case time was granted for six weeks and failure thereby certainly can be condoned by the Court itself if the Court otherwise thinks it fit and proper.

In my opinion Order 8 r.

5 has no application in the present case and simply no right can be accrued to the plaintiff within the specified time before the trial is commenced.

This conclusion can only be taken after the evidence is complete but this is not the case here.

It may be mentioned further that when the application for amendment was allowed question was raised by Mr.Kar with regard to the delay in allowing the amendment application having regard to the principal claim being barred by the laws of limitation and the Court observed that Mr.Kars client would be at liberty to raise further objection on the question of limitation at the time of filing of additional pleadings, therefore, simply by not filing additional pleadings within time it cannot be claimed that plaintiffs claim has become final or revived if it had already been barred as against defendant No.1 or that the defendant No.1 has no right to make any denial thereafter.

Therefore, I am not agreeable with the submissions made by Mr.Dasgupta.

In view of provisions of Rule 18 I am of considered opinion that this provision implies that Court has every authority to extend the time and Rule 18 mentions unless the time is extended by the Court is a clear indication of the Court having discretion to exercise independent of any other provision in the Code.

Legislature has consciously introduced this provision, it is within the knowledge of the Legislature that there may arise a situation like this where party may have to get extension of time even after time fixed by the Court for filing additional written statement like the case here.

Therefore, there is no reason to disallow the prayer made by the defendant to file additional written statement.

However, the delay is not so fatal in this case that the defendant can be shut out from filing additional written statement.

I am, therefore, inclined to allow the application for extension of time filed by the defendant No.1 for filing additional written statement.

Mr.Kar has further placed reliance on a reported decision of Andhra Pradesh High Court in the case of (G.

Parimala Versus MRS.Bimala Bhatia & Ors.) reported in 2005(3) ALT301 This is a Division Bench Judgment which deals with the issues relating to limitation of

power of the Court under Section 148 of the Code of Civil Procedure.

However, this has been clarified that Section 148 has got a very limited scope which of couRs.cannot interfere with the discretionary power of the Court, under Section 151 of the Code of Civil Procedure.

In view of the delay though not inordinate and fatal but the defendant should have been more careful about filing of additional written statement where Court has fixed a time ; I propose to impose a token cost of Rs.8500/- upon the defendant No.1 and subject to payment of the cost within two weeks, defendant No.1 is allowed to file additional written statement within three weeks from the date of obtaining a server copy of this order.

Such cost has to be paid in favour of the plaintiff by an account payee cheque.

(SAHIDULLAH MUNSHI, J.) GH.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com