

Ms. Arati Ghose Vs. Response Properties Pvt. Ltd. and ors.

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Court : Kolkata

Decided On : Aug-20-2014

Judge : Soumen Sen

Appellant : Ms. Arati Ghose

Respondent : Response Properties Pvt. Ltd. and ors.

Judgement :

GA1559of 2014 WITH CS316of 2012 IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE Ms.ARATI GHOSE VERSUS RESPONSE PROPERTIES
PVT.LTD.& ORS.BEFORE: The Hon'ble JUSTICE SOUMEN SEN Date : 20th
August, 2014.

MRS.Lapita Banerji,Advocate appeaRs.Mr.A.C.Kar,Sr.Advocate
appeaRs.Mr.P.C.Pal Chowdhury,Advocate appeaRs.The Court :- This is an
application by the defendant No.1 for dismissal of the suit in view of failure on the
part of the plaintiff to take out the writ of summons and lodge the same with the
office of the Sheriff in terms of Rule 6 of Chapter 8 of the Original Side Rules.

Mr.A.C.Kar,learned Senior Counsel appearing on behalf of the plaintiff draws my
attention to an administrative direction issued with the approval of the Honble
Justice Salil Kumar Roy Chowdhury (as His Lordship then was) and printed and
published on 9th March,1977 which is reproduced hereinbelow : 1.

Every plaint, written statement or other pleading which is without stamp or is insufficiently stamped shall be presented before the Judge taking interlocutory matters until further order.2.

Unless otherwise ordered, the department shall issue the writ of summons in a suit within 10 days from the date of filing the plaint.

The department will get the writ of summons signed and sealed.

All writs of summons shall be issued by the department immediately after the same are signed and sealed but not later than the date next after the date signing the writ of summons by the officer.

3. In case the department feels any difficulty to issue a writ of summons within such time, it shall place the matter before the Master stating the difficulty arising in that case and the Master will then place the matter before the Judge taking interlocutory matters in chambers for appropriate direction, if necessary.

It is submitted that unless the writ is issued by the department on the basis of the administrative order, there is no obligation on the part of the plaintiff to lodge the writ of summons with the office of the Sheriff.

However, I am unable to accept such submission.

The administrative order cannot override the rules framed.

Moreover, the date of issuance of the writ as I could find out from the specimen copy of the writ produced before this Court is when the writ is actually lodged with the department and thereafter the department is required to put the date.

In any event there is nothing on record to show that the department had failed to issue any summons.

Once a suit is instituted it is the duty of the plaintiff to take steps for service of the writ of summons.

That the department had failed to issue summons and hence service cannot be accepted since in many suits filed prior and subsequent to the instant suit writ of summons have been lodged and service effected.

The plaintiff cannot avoid its responsibility.

There is no explanation offered by the plaintiff for not being able to take any steps to take out the writ of summons and lodge the same within the stipulated time.

No attempt has been made by the plaintiff to have the period extended.

It appears that the plaintiff is not intended to proceed with the suit.

In view thereof, there shall be an order in terms of prayers (a) and (c) of the application.

This application, accordingly, stands disposed of.

Certified website copies of this order, if applied for, be urgently supplied to the parties subject to compliance with all requisite formalities.

(SOUMEN SEN, J.) S.Chandra

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