

ODC – 1

ORDER SHEET

IA No. GA 2 of 2020

In

CS 245 of 2019

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SIDDHA REAL ESTATE DEVELOPMENT PRIVATE LIMITED
Versus
GIRDHAR FISCAL SERVICES PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 24th December, 2020.

[Via Video Conference]

Appearance:

Mr. Meghajit Mukherjee, Adv.

Mr. Ramendu Agarwal, Adv.

Ms. Priyanka Sharma, Adv.

... for the plaintiff/respondent

Mr. Zeeshan Haque, Adv.

Mr. Saket Chaudhary, Adv.

... for the defendant/petitioner

The Court : This application is for extension of time to file the written statement affirmed on behalf of the defendant on 22nd June, 2020.

The dates relevant for the purposes of this application are as follows :

- (i) The suit was filed under the Commercial Division on 15th November, 2019.
- (ii) The writ of summons was served on 2nd December, 2019.

- (iii) The 30 days expired on 2nd January, 2020.
- (iv) The 120 days time for filing the written statement under the amendment made to Order VIII Rule 1 of The Code of Civil Procedure after coming into force of The Commercial Courts Act, 2015, ended on 31st March, 2020.
- (v) The application for extension of time was filed by the defendant before the Master on 5th February, 2020 seeking 8 weeks time for preparing and filing the written statement.

Mr. Zeeshan Haque, learned counsel appearing for the applicant/defendant relies on an Order passed by the Supreme Court on 23rd March, 2020 in which the difficulties faced by litigants by reason of the pandemic were taken into account and the period of limitation prescribed under the general as well as the special laws was extended with effect from 15th March, 2020 till further orders. Counsel relies on a recent order of the Supreme Court in Civil Appeal No. 4085 of 2020 dated 17th December, 2020 which reiterates that the period of limitation for filing the written statement which had expired on 12th August, 2020 in the facts of that particular case stands extended by reason of the order of 23rd March, 2020 passed by the Supreme Court. Counsel places relevant paragraphs from the application which show that the defendant was unable to take steps for filing the written

statement on and from 25th March, 2020 from which date the country went into lockdown due to the outbreak of the pandemic. Counsel submits that there has been no laches on the part of the defendant since the defendant applied before the learned Master of this Court for appropriate orders.

Mr. Meghajit Mukherjee, learned counsel appearing for the plaintiff opposes this application on the amendment brought about to Order VIII Rule 1 of The C.P.C. pursuant to The Commercial Courts Act, 2015 and submits that the first step taken by the defendant for filing of the written statement was after the prescribed period of limitation of 30 days had expired on 2nd January, 2020. Counsel relies on an order of the Supreme Court in Civil Appeal 3007-3008 of 2020 dated 18th September, 2020 which drew a distinction between “period of limitation” and “the period upto which delay can be condoned in exercise of discretion conferred by the statute”. Counsel points to the prayer of the defendant for filing of its written statement within 8 weeks in the application made before the Master on 5th February, 2020.

Upon hearing learned counsel appearing for the parties, Order VIII Rule 1 of The Code of Civil Procedure is required to be set out together with the Amendment to the Section pursuant to The Commercial Courts Act, 2015.

Order VIII

[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.]

****[Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes]***

As per S.16 of Act 4 of 2016, in its application to any suit in respect of a commercial dispute of a Specific Value, in Order VIII, in Rule 1, the proviso, the following proviso shall be substituted, namely :-

“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 written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record” . – [Vide Act 4 of 2016, S. 16 and Sch. (w.r.e.f. 23-10-2015)]

In order to ascertain if the defendant can take recourse to the Supreme Court Order of 23rd March, 2020 by which the limitation period in a large number of actions was extended with effect from 15th March, 2020 till further orders, the said order has to be read in conjunction with the later order of the Supreme Court of 18th September, 2020. Paragraph 19 of the order of 18th September, 2020 clarifies the earlier order of 23rd March, 2020 in the following manner :

19. But we do not think that the appellants can take refuge under the above order. **What was extended by the above order of this Court was only “the period of limitation” and not the period upto which delay can be condoned in exercise of discretion conferred by the statute.** The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceeding within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is *Vigilantibus Non Dormientibus Jura Subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

This position was reiterated in paragraph 23 of the said order :

23. Therefore, the expression “prescribed period” appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the **prescribed period**, during which the Court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be “prescribed period”.

(The emphasis is in the paragraphs extracted)

The above observation of the Supreme Court has to be read in the background of the Amendment to Order VIII Rule 1 in matters filed under The Commercial Courts Act, 2015. The Amendment would indicate that the prescribed period of limitation is the initial period of 30 days as provided under Order VIII Rule 1.

However, if a defendant fails to file the written statement within the said prescribed period of 30 days, an additional period may be allowed to the defendant for filing of the written statement but which would not extend beyond 120 days from the date of service of summons. The additional period beyond the prescribed period of 30 days can only be allowed upon the Court recording reason for such and on payment of costs as the Court deems fit. The words used in the amendment are clear and unambiguous and to the effect that a defendant in a matter covered by The Commercial Courts Act, 2015 will not be permitted to file its written statement beyond 120 days.

Two questions arise from this construction. First, whether the initial period of 30 days is the prescribed period for the purposes of limitation and second, whether the defendant can take refuge under the order of 23rd March, 2020 passed by the Supreme Court. With regard to the first question, the words of the amendment make it clear that the additional period allowed to a defendant comes into play only after the defendant has failed to file its written statement within the prescribed period under Order VIII Rule 1 which is 30 days. Hence, the 90 days additional window following the prescribed period is the additional period and not the prescribed period of limitation under Order VIII Rule 1.

With regard to the second question, the order of 23rd March, 2020 has to be read with the order of 18th September, 2020, for understanding the limit of the leeway granted by the Supreme Court in view of the difficulties faced by litigants across the country on and from 15th March, 2020. Paragraph

19 of the later order clarified the earlier order of the Supreme Court and the words used therein make it clear that the extension given was only confined to the prescribed period of limitation and cannot be construed to mean the period beyond the prescribed period which allows a Court to exercise its discretion on whether to allow or refuse the period in addition to the prescribed period. This Court is therefore of the view that the order of the Supreme Court dated 23rd March, 2020 would apply only to the first 30 days for filing written statement under Order VIII Rule 1 of The CPC and not to the additional 90 days which follows the prescribed period for matters covered by the 2015 Act. Besides the orders of the Supreme Court should be seen in their specific factual context and that the orders were passed in exercise of the power under Article 142 of The Constitution of India. The order dated 18th September, 2020 also restricts the window to vigilant litigants. In this case the application was filed beyond the prescribed period of 30 days.

The other issue is whether the defendant showed promptness in pursuing its right of filing the written statement. The prescribed period of 30 days ended on 2nd January, 2020 and the additional 90 days (120 days under the Amendment) ended on 31st March, 2020. The application was filed by the defendant for extension of time on 5th February, 2020 seeking a further period of eight weeks for filing of its written statement thereby extending the time till 5th April, 2020. The prayer made therefore is clearly outside even the additional period of 90 days as prescribed by the Amendment. It should also be noted that paragraph 16 of the application filed by the defendant states that

judicial functions and listing of urgent matters started in phases on and from June, 2020 and matters taken up in the regular course in this Court resumed only on and from 7th December, 2020. This is clearly an incorrect statement since The High Court at Calcutta commenced its judicial business intermittently from April, 2020 and in right earnest from June, 2020 which continues as on date. The defendant therefore cannot take recourse to this ground at all.

In view of the above reasons, this Court does not find any ground either provided under Order VIII Rule 1 or the amendment thereto or by the orders of the Supreme Court for allowing the application for extension of time to file the written statement.

G.A. No. 2 of 2020 is accordingly dismissed. There shall be no order as to costs.

(MOUSHUMI BHATTACHARYA, J.)