

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8513 OF 2015

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|----|-----------------------------------|--|
| 1] | The General Manager |] |
| | Airport Authority of India |] |
| | International Airports Division, |] |
| | Air Cargo Complex, Sahara Airport |] |
| | Andheri (E) Mumbai – 400 099 |] |
| | |] |
| 2] | Asst. Commissioner of Customs |] |
| | Air Cargo Complex, Sahara Airport |] |
| | Andheri (E) Mumbai – 400 099 |] |
| | |] |
| 3] | Union of India |] |
| | Through the Advocate for the |] |
| | Union of India, Ministry of Law |] |
| | And Justice, Aykar Bhavan, |] |
| | New Marine Lines, Mumbai |] |
| | |]..... Petitioners/
Orig.Defendants |

versus

Sun Pharmaceutical Industries Ltd.	]
A Company Registered under the	]
Companies Act, 1956, having its	]
Registered Office at SPARC, Akota Road,	]
Akota, Bandra – 390 020, one of the	]
factories at Plot No.25, GIDC, Phase – IV	]
Panoli – 395 116 and corporate office at	]
Acme Plaza, Andheri Kurla Road	]
Andheri (East), Mumbai 400 059	]
	]..... Respondent/ Orig. Plaintiff.

Ms. Martina Sapkal i/by Arun Sapkal & Co. for the Petitioners.
Mr. Mahesh Londhe for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 26th August 2015

ORAL JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made
returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 29/04/2015 passed by the learned Judge, City Civil Court, Greater Bombay by which order the Notice of Motion No.3222 of 2014 filed by the Petitioners seeking extension of time to file the Written Statement and for the Written Statement to be taken on record came to be rejected.

3 It is not necessary to burden this order with unnecessary details, suffice it would be to state that the suit was originally filed in this Court and was numbered as High Court Suit No.437 of 2003. On the pecuniary jurisdiction of the City Civil Court being enhanced the suit came to be transferred to the City Civil Court and now bears Suit No.10642 of 2003. It appears that the Petitioner i.e. the original Defendant was represented in the said suit whilst it was pending in this Court. It appears that in view of the fact that the Written Statement was not filed, the suit came to be transferred to the list of undefended suits in this Court. Thereafter the suit came to be transferred to the City Civil Court some time in November 2012. In view of the fact that the advocates who were appearing for the Defendants in this Court were not in position to attend the City Civil Court, that the matter came to be transferred to the present advocates. Prior thereto, it seems that the Written Statement that was to be filed was affirmed on 9/12/2003 but it was not tendered in this Court. After the suit was transferred to the City Civil Court, it

appeared on board in February 2013 when it was adjourned on the ground that no Written Statement was filed and for hearing of the suit on the basis that the suit had to be proceeded ex parte. It seems that the Plaintiffs had adduced their evidence in July 2014 and thereafter some time in August 2014 that the instant Notice of Motion came to be filed on behalf of the Defendant seeking extension of time to file the Written Statement and for the Written Statement to be taken on record. The facts as afore stated were mentioned in the Affidavit in Support of the said Notice of Motion and it was further stated that since the Defendant No.1 is a public authority on account of practical difficulties in view of the officers getting transferred that the track of the matter could not be kept and therefore though the Written Statement was affirmed, it was not filed.

4 The Plaintiff filed its reply to the said Notice of Motion and the reasons mentioned by the Defendants in the said Notice of Motion for seeking extension of time were questioned.

5 The Trial Court considered the said application and as indicated above has by the impugned order dated 29/04/2015 rejected the said Notice of Motion. The Trial Court held that the inadvertence of advocates and officers cannot be considered as inevitable circumstances to extend the time mentioned in Order VIII Rule 1 of the Code of Civil Procedure. The Trial Court further

observed that since the Written Statement was affirmed, the same could have very well been filed by the Defendants in the year 2003 and for failure to do so, no plausible explanation is forthcoming. The Trial Court advertent to the fact that it is only in exceptional circumstances the time can be extended, deemed it appropriate to reject the reasons given by the Defendants for extension of time to file the Written Statement and for the Written Statement to be taken on record and accordingly rejected the Notice of Motion.

6 The learned Counsel for the parties would make submissions for and against the extension of time to file the Written Statement and, for and against the Written Statement being taken on record. The learned counsel for the Petitioners sought to place reliance on the judgment of this Court reported in 2015(1) Mh. L.J. 896 in the matter of Deepak Chhabria and another v/s. Supreme Indosaigon Associates and another in support of her case that time be extended and Written Statement be taken on record.

7 On the other hand the learned counsel appearing for the Respondent – original Plaintiff would seek to draw this Court's attention to the discrepancies in the case of the Defendants as made out in the affidavit in support and as mentioned in the above Writ Petition.

8 Having heard the learned counsel for the parties, I have

considered the rival contentions. The question is whether in the facts and circumstances of the present case, the time to file the Written Statement as mentioned in Order VIII Rule 1 of the Code of Civil Procedure is required to be extended. In the said context it is required to be noted that there can be no dispute about the fact that the Written Statement was affirmed on behalf of the Defendants 9/12/2003, however, the same was not filed. The Written Statement which was affirmed on 09/12/2003 has been produced by the learned Counsel for the Petitioners for the Court's perusal. On perusal it is found that the Written Statement was in fact affirmed on 09/12/2003. It is the case of the original Defendants that on account of practical difficulties arising out of keeping track of the matter on account of the change in the instructing officers that the Written Statement remained to be filed though affirmed. Hence this is not a case where the party has not taken any steps to file its Written Statement. It is a case where on account of practical difficulties probably the Written Statement remained to be filed. It is well settled that Order VIII Rule 1 of the Code of Civil Procedure is directory and not mandatory and that for sufficient reasons time can be extended. In the instant case considering the fact that the Airport Authority of India is a public body, weightage would have to be given to the fact that the officers who are concerned with the department in question keep on changing on account of transfer and therefore the reasons put forth on behalf of the Defendants can be said to be plausible reasons for the Written Statement not being filed though

affirmed. In my view, therefore, in the interest of justice the time to file the Written Statement is required to be extended. The learned counsel for the Petitioners original Defendants states that the Written Statement affirmed on 09/12/2003 would be filed by the Defendants in the Trial Court. The time to file the said Written Statement is accordingly extended by a period of four weeks from date. The Trial Court is directed to take the said Written Statement on record. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]