

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS (L) NO. 2202 OF 2015
IN
SUIT NO. 543 OF 2015

Saundarya Productions Pvt. Ltd. & Anr. .. Applicants

In the Matter of :-

Mr. Sanjay Gupta .. Plaintiff

V/s.

Saundarya Productions Pvt. Ltd. & Ors. .. Defendants

...

Mr. Ashish Kamath a/w Mr. Rahul Mehta and Ms. Mansi Nair i/b. Naik
Naik & Co. for Plaintiff.

Mr. Rajiv Narula i/b. M/s. Jhangiani Narula & Associates for Defendant
Nos. 1 and 2.

CORAM : A. K. MENON, J.
DATE : DECEMBER 07, 2015.

P.C.:

1. This is an application by way of a Chamber Summons seeking extension of time granted under clause 2 (b) (vii) of an Order dated 25th June 2015 in the above suit. By the said order the Court recorded consent of both parties to enable the plaintiff to deposit a sum of Rs. 20,00,000/- in this Court as set out in clause 2 (a).

2. Subject to the deposit the Defendant Nos. 1 and 2 were given liberty to file a civil suit in respect of their claim in a competent

court. The plaintiff was also entitled to file a counter claim or an independent suit against the defendant. Such liberty is recorded in paragraph in 2 (b) (v). The consent order also provided to Clause 2 (b) (vii) as follows ;

“ (vii) If Defendant Nos. 1 and 2 fail to file the suit and secure appropriate reliefs relating to the deposit on or before 31st October 2015 the deposit shall be refunded by the Prothonotary and Senior Master to the Plaintiff with accrued interest. Alternatively, the deposit shall abide by the order passed in the suit filed by the Defendant Nos. 1 and 2. “

3. Mr.Narula the learned counsel for the applicant submits that in terms of the consent order a suit was filed in the Bombay City Civil Court of Bombay on 13th October 2015. However, no application was made to secure any reliefs in respect of the deposit made in this Court and therefore no order qua the deposit was obtained before the specified date i.e. 31st October 2015. He seeks extension of time to make that application. He relies upon the provisions of the consent order as regards the transfer of said deposit to the credit of that suit to be filed. This is contained in clause 2 (b) (vi) which reads as follows ;

(vi) If the Defendant Nos. 1 and 2 institutes such suit in any competent Court, the amount of deposit of Rs. 20,00,000/- shall stand transferred to the

credit of such suit and defendants Nos. 1 and 2 shall be entitled to apply to that Court for retention/withdrawal of such deposit and such application made by Defendant Nos. 1 and 2 shall be considered independently uninfluenced by this order, and on its own merits. Similarly, the Plaintiff shall be entitled to contend that the Deposit is liable to be refunded to him. All rights and contentions in this behalf are kept open.

4. It is applicant's case that due to an inadvertent error on their part they could not apply for reliefs and therefore could not secure “appropriate relief” contemplated in clause 2 (b) (vii) on or before 31st October 2015. According to the applicant, the amount Rs. 20,00,000/- deposited in this Court pursuant to the order dated 25th June 2015 is still lying with the Prothonotary and Senior Master of the High Court to the credit of the present suit.

5. Learned counsel for the applicant submits that the Court is vested with sufficient power to extend time inter alia under Section 148 of the Code of Civil Procedure. He relies upon judgment of the Supreme Court in the case of Smt. Periyakkal & Ors V/s. Smt. Dakshyani (1983) 2 SCC 127 and states that in paragraph 4 it was observed that the parties entered into a compromise and invited the Court to make an order in

terms of the compromise which the Court did. The time stipulated for deposit was a time allowed by the Court and therefore the Court would have jurisdiction to extend the time in appropriate cases. Mr. Narula also relied upon the Supreme Court's decision in Johri Singh V/s. Sukh Pal Singh & Ors (1989) 4 SCC and the observation of the Apex Court in paragraph 20 to say that the Court will extend time when it finds that the mistake was the result of, or induced by, an action of the court, since the act of the court should not prejudice any party. He submits that the present case is one such and due to an inadvertent error in the order the defendants should not be deprived of their opportunity to apply for retention of the amount to the credit of the suit filed.

6. The Chamber Summons is opposed by Mr. Kamat on behalf of the plaintiff. The learned Advocate for the plaintiff states that the deposit of Rs. 20,00,000/- was made within the time provided by the Court and the order granting time to make the application and providing for retention of the deposit till 31st October 2015 was made on 25th June 2015. A diligent defendant would have filed the suit promptly. However the Defendant Nos. 1 and 2 had filed the suit only on 13 October 2015 in spite of their being aware that the amount of Rs. 20,00,000/- would have to be refunded by virtue of operation of clause 2 (b) (vii). Mr. Kamat further submits that clause 2 (b) (vii) clearly provides that the

order of refund was to take effect on 31st October 2015.

7. Having heard parties, I am of the view that the Applicant is not entitled to extension of time or any modification of the Order dated 25th June 2015. Even as on date there is no application filed by the Defendant Nos. 1 and 2 in their suit seeking transfer of the sum deposited in this court. In view of this difficulty faced by the Defendant Nos. 1 and 2 an application made before the learned Single Judge who passed an order dated 25th June 2015 for Speaking to the Minutes. This application was heard on 5th December 2015 and was rejected by the learned Judge for reasons set out in the said order. It transpires that the amount of Rs. 20,00,000/- presently continues to lie deposited in this Court to the credit of the above suit. The Defendants Nos. 1 and 2 have also not informed the Prothonotary of the fact that a suit has been filed on contemplated in paragraph 2 (b) (vii) of the order. If the Prothonotary had been informed of the particulars of the suit being filed in the City Civil Court the amount would stand transferred to the credit of that suit. In the absence of any intimation to the Prothonotary the order of transfer of the deposit would not be given effect to.

8. In the circumstances on a proper interpretation of the order dated 25th June 2015, it appears that the intention of the Court in clause 2 (b) (vii) was to ensure that the amount of Rs. 20,00,000/- shall be

refunded to the plaintiffs unless appropriate relief enabling the defendants 1 and 2 to retain the deposit was obtained in the new suit on or before 31st October 2015. The further provision that the deposit would abide by the order of the Court in which the new suit was filed would contemplate a situation where the deposit stood transferred to the credit of the new suit but would be abide by the order of court in the new suit. Meanwhile, the suit filed in City Civil Court provides it was made within time and that the deposit would abide by that order.

9. Apropos Mr. Narula's reliance on the decision in *Periyakkal* (Supra), in the case at hand the date of 31st October 2015 was not fixed by the Court but it was the date fixed by consent of parties. The defendants Nos. 1 and 2 had noticed on this fact upon the order being passed on 25th June 2015. Suffice it to say that in my view, no manifest injustice is likely to be caused to Defendant Nos. 1 and 2 if time is not extended or if the deposit is not so retained inasmuch as, the Defendant Nos. 1 and 2 have filed a Summary Suit under Order XXXVII of the Code. They are obliged to take out a Summons for Judgment upon which the court can make an order on the merits of the case. In this context I deem it necessary to and it is clarified that this order refusing to extend time shall not in any manner affect the hearing of the Summons for Judgment and the Defendant Nos. 1 and 2 will be at

liberty to urge the court and seek a deposit in the summons for judgment without being influenced by the observation in this Order.

10. At this stage Mr. Kamat the learned Counsel for the plaintiff states that the plaintiff have already applied for withdrawal of the amount of Rs. 20,00,000/- on or above 20th November 2015. If that application is pending the Prothonotary and Senior Master shall act on an authenticated copy of this order and refund the amount of the deposit. Chamber Summons is disposed of on the above terms.

(A. K. MENON, J.)