

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.257 OF 2018

Parasmal Uttamchand Jain & Anr. ... Appellants
Vs.
Chandrakant Hari Thatte (Since deceased) ... Respondents
& Ors.

Mr.S.G.Kurup alongwith Mrs.Seema Chopda and Ms.Ishwari Sabadra ,
Mrs.Vaishali Tambe for Appellants.
Mr.G.K. Vishwanath i/by Mr.Amit Bharadwaj and Mr.Ranjit Agashe for
Respondent.

CORAM : A.S. OKA &
M.S.SONAK, JJ.

DATE : 5th SEPTEMBER, 2018

P.C.

1. By this Letters Patent Appeal, the original Plaintiffs have taken an exception to the order dated 9th March 2018 passed by the learned Single Judge. By the said order, the learned Single Judge directed that Written Statement of the first and second Defendants (first and second respondents) affirmed on 20th February 2008 and Written Statement of third and sixth Defendants (third and sixth Respondents) affirmed on 11th February 2008 should be taken on record. The learned Single Judge also passed the consequential orders regarding exchange of statement of admission and denial with reasons for denial, filing of Affidavit of documents etc. The learned Single Judge ordered that the suit be listed on 18th April 2018 for settlement of issues.

2. The first submission of the learned counsel appearing for the Appellant/Plaintiff is that the learned Single Judge committed illegality by taking on record written statements of the concerned Defendants without there being no written application made by the said Defendants explaining the delay in filing the same. He invited our attention to the order dated 1st November 2007 passed by the Commissioner for Taking Accounts, wherein, the prayer for grant of time to file Written Statement was rejected and the suit was transferred to the list of Undefended suits. He pointed out that Chamber Summons No.1663/2008 taken out by the Defendants for taking Written Statement on record was withdrawn under the Order dated 9th April 2009 with liberty to take out a fresh one. He also invited our attention to subsequent orders of the learned Single Judge of 28th April 2014 and 3rd March 2014. Lastly, he invited our attention to order dated 14th February 2018 passed by the same learned Single Judge who passed the impugned order. He also pointed out the averments made in Affidavit in support of Motion of Motion (L) No.199 of 2018 and other Notice of Motions/Chamber Summons taken out by the Defendants, wherein, allegations have been made by the second to fourth Defendants against the sitting Judges of this Court. He pointed out the order dated 14th February 2018 in which the interim applications were permitted to be

withdrawn with liberty to file fresh applications or consolidated applications. He also invited our attention to letters dated 20th January 2018 and 27th January 2018. The letter dated 20th January 2018 has been addressed by Respondent No.1A to the Hon'ble the Acting Chief Justice of this Court and separate letter dated 27th January 2018 has been addressed by Respondent No.1A and 1B respectively to the Hon'ble the Chief Justice of India, making serious allegations against the sitting Judges of this Court.

3. Learned counsel appearing for the Respondents tenders across the bar two Affidavits. The first Affidavit is of third and fourth Respondents. The fourth respondent is also the respondent No.1A. The second Affidavit is of second Respondent who is also respondent No.1B. In the Affidavits, the concerned Respondents have tendered apology to this Bench and have stated that they have withdrawn the letters dated 27th January 2018 addressed to the Hon'ble the Acting Chief Justice of this Court and the Hon'ble Chief Justice of India. As regards the letter dated 20th January 2018 addressed by the fourth Respondent, he has stated that even the said letter is withdrawn in view of his statement recorded in the order dated 14th February 2018. The learned Counsel appearing for the said Respondents states that the said Respondents have already withdrawn the allegations and have tendered apology and

in fact they have given undertaking which is recorded in the order dated 14th February 2018.

4. We have considered the submissions. The effect of the impugned order is that in the suit filed in the year 2003, the learned Single Judge has taken on record Written Statement of First and Second Defendants affirmed on 20th February 2018 and the Written Statement of third and sixth Defendants affirmed on 11th February 2008. It is true that an application in writing was not made by the said Defendants for explaining the delay and for taking their Written Statements on record. It is also true that under the order dated 14th February 2018 passed by the learned Single Judge, a liberty was granted to the concerned Defendants to take out applications or a consolidated application. We must note here that in paragraph 4 of the impugned order, the learned Single Judge has noted that Written Statements were ready way back in the year 2008. Consequently, he has noted that if a direction is issued to the Defendants to take out a formal application, it will only add to multiplicity of proceedings and will further delay the progress of the suit of the year 2003. In fact, in paragraph 5, the learned Single Judge observed that as there is hardly any progress made in the suit of the year 2003, for putting an end to this situation, he directed the Registry to take the said Written Statements on record. Paragraphs 8 to 10 of

the impugned order will show that the learned Single Judge issued directions to ensure that the suit makes a progress. Moreover, the learned Single Judge proceeded to fix the suit on 18th April 2018 for settlement of issues. As far as Original Side of this Court is concerned, the substantive provisions of Rule 1 of Order VIII of the Civil Procedure Code (for short “the said Code”) are not applicable. The law is well settled as can be seen from the decision of the Apex Court in the case of Iridium India Telecom Ltd. V/s. Motorola Inc.¹ The Apex Court considered the provisions of Section 129 of the Civil Procedure Code and held that the limited period prescribed in Rule 1 of Order VIII for filing Written Statement was not applicable to the suits on the Original Side of a Chartered High Court. It was held that the Original Side of the Chartered High Courts will continue to be governed by its Original Side Rules. Therefore, substantive provision of Rule 1 of Order VIII of the Code could not have prevented the learned Single Judge from taking the Written Statements on record. Moreover, we find that by order dated 28th April 2014 passed in Chamber Summons No.1655 of 2011, amendment of the Plaint permitting addition of several paragraphs has been allowed. In paragraph 1 of order dated 28th April 2014, the learned Single Judge specifically mentioned that he was permitting amendment of several paragraphs to the Plaint on the ground that Written Statements have not been filed and issued have not been framed.

¹ 2005 (2) SCC 145

5. The reasons have given by the learned Single Judge for taking Written Statements on record without there being a formal application. He wanted to ensure that Suit of the year 2003 makes a progress. It is very difficult to find fault with the approach of the learned Single Judge and discretion exercised by the learned Single Judge. Moreover, by the impugned order, rights and liabilities of the parties have not been decided. Even assuming that a Letters Patent Appeal against the impugned order is maintainable, we find no error in the impugned order.

6. As noted earlier, the Defendants have addressed letters on 20th January 2018 and 27th January 2018 to the Hon'ble the Acting Chief Justice of this Court and the Hon'ble Chief Justice of India respectively making scandalous allegations against the sitting Judges of this Court. We find that similar allegations were made by the original second and fourth Defendants by taking out Notice of Motion (L) No.199 of 2018. The order dated 14th February 2018 passed by the learned Single Judge reads thus:-

“1 Mr.G. Vishwanath advocate for defendant Nos.2 to 5 seeks leave to withdraw the Notice of Motion. Notice of Motion dismissed as withdrawn. Counsel further assures that no application will be made mentioning the Judges name or making allegations against Judges. Statement accepted as an undertaking to the court.

SUIT NO.3827 OF 2003
JUDGES ORDER NO.255 OF 2013

CHAMBER ORDER (L) NO.161 OF 2014
CHAMBER SUMMONS (L) NO.353 OF 2013
CHAMBER SUMMONS NO.121 OF 2016
CHAMBER SUMMONS NO.495 OF 2014
NOTICE OF MOTION NO.732 OF 2014
NOTICE OF MOTION NO.1069 OF 2014
NOTICE OF MOTION NO.1402 OF 2014
NOTICE OF MOTION NO.1401 OF 2014
CHAMBER SUMMONS NO.894 OF 2015
NOTICE OF MOTION NO.793 OF 2016
NOTICE OF MOTION NO.791 OF 2016
NOTICE OF MOTION NO.952 OF 2016
NOTICE OF MOTION NO.1180 OF 2017
NOTICE OF MOTION NO.1178 OF 2017
NOTICE OF MOTION NO.1177 OF 2017
NOTICE OF MOTION NO.1176 OF 2017

1 It appears that written statements of defendants are on record and the same seems to have been refiled pursuant to order passed by Prothonotary & Senior Master. Mr. Kurup states that the order is dated 23.12.2013. Mr. Kurup states that Prothonotary & Senior Master could not have directed the written statement to be taken on record because this court has passed an order placing the suit as undefended. Mr. Kurup also states that the application for condoning delay in filing written statement also came to be dismissed for non removal of office objections. Mr. Kurup also states that in almost all the applications filed by defendants which are pending, allegations have been made against the court, the judges and Lawyers.

2 Mr.Vishwanath for defendant nos.2 to 5 states that these applications were filed before he was briefed in the matter. Mr.Vishwanath states in fairness that such allegations should not have been made and the language used should not have been used. Mr.Vishwanath seeks leave to withdraw all these interim applications with liberty to file fresh and assures the Court that party will not make any allegations against the court or Lawyers. In view of the above statement made by Mr.Vishwanath, all the interim applications filed for and on behalf of defendants, which are listed today are dismissed as withdrawn with liberty to file fresh either separate or consolidated applications.

Stand over to 9.3.2018 for directions”.

7. Moreover, as noted earlier, the second, third and fourth Respondents have tendered separate Affidavits on record tendering apology to this Court and they have withdrawn letters addressed by them. The allegations which are made by the Defendants in the said letters and in the said Notice of Motion are of scandalous nature and prima-facie amount to committing criminal contempt. The tendency of making such reckless allegations against the Judges of this Court is on rise. The allegations are made with the full knowledge that the Judges are not able to defend themselves against such allegations. Only in the light of the undertaking recorded in the order dated 14th February 2018 of the Second to Fifth Respondents and only in the light of the Affidavits tendered across the Bar by Second to Fourth Respondents, we are not initiating any action. Incidentally we may record that the concerned Respondents have chosen to make several allegations against the learned Single Judge who has passed the impugned order. Considering the Undertaking which is recorded in the order dated 14th February 2018 and Affidavits tendered on record, we are not initiating any action against the concerned Respondents on the basis of such allegations.

8. Subject to what is observed, we find no error in the impugned order and the Appeal is accordingly dismissed. No order as to Costs.

All Chamber Summons and Notice of Motions stand disposed of.

(M.S.SONAK, J)

(A.S. OKA, J)