

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS (CHSCD) No. 1462 of 2018

IN

COMMERCIAL IP SUIT No. 519 OF 2017.

Videocon d2h Limited

..Applicant/Orig.
Defendant No.1.

In the matter of :

Glamour Struck Production Pvt. Ltd.

..Plaintiff

Vs

Videocon d2h Limited & Anr

..Defendants

Mr. Rashmin Khandekar, Advocate a/with Rishi Mody, Shruti Karkhanis and Ms. Karishni Khanna i/by Singh & Singh / Malhotra & Hegde for the Applicant/Original Defendant No.1.

Ms. Nisha Kabe i/by Naik Naik & Co. for Original Plaintiff.

Ms. Srishti Poojari i/by Legal House for Defendant No.2.

CORAM : B. P. COLABAWALLA, J.

DATED :- 6th MARCH, 2020.

P.C. :-

1. The present Chamber Summons is filed by Defendant No.1 seeking to condone the delay of 106 days in filing its written statement and for a direction that the written statement be taken on record. The learned Advocate appearing for defendant No.1 submitted that the mandatory period of 120 days to file a written statement as contemplated under the Commercial Courts Act, 2015 does not apply in the present case. This was for the simple reason that the present suit was filed on 6th March, 2017 and in which a claim of Rs.70 lakhs was made for the purposes by way of damages. At the time when the suit was filed the Specified Value for a Commercial Suit was Rs. 1 crore. Thereafter, an amendment was brought in the Commercial Courts Act on 3rd May, 2018 whereby the Specified Value for a Commercial Suit was reduced from rupees one crore to rupees three lakh. He therefore submitted that at the time when the suit was filed, though it was a Commercial Suit, the Specified Value was less than Rs. 1 crore. It was only once the Specified Value was reduced to rupees three lakhs that the present suit came within the aforesaid ambit. He submitted that in such a situation the amendments to the Civil Procedure Code by the Commercial Courts Act did not apply to the present suit.

2. In this regard, he took me through certain provisions of Commercial Courts Act and also relied upon a decision of this Court (S.J. Kathawalla,J) in the case of *Bharat Bhogilal Patel v. Leitz Tooling Systems India Private Limited [2019 SCC OnLine Bom 890]* .

3. I have heard the learned Counsel appearing on behalf of the Plaintiff as well as Defendant No.1. I find considerable force in the argument canvassed on behalf of Defendant No.1. This issue is squarely covered by a decision of this Court in the case of *Bharat Bhogilal Patel* (supra). This being the case, I find that there is no impediment in entertaining this Chamber Summons and allowing the Written Statement to be filed on behalf of Defendant No.1 by condoning delay of 106 days which is sought to be explained in Paragraph Nos. 4 to 7 of the affidavit in-support. In these circumstances, the Chamber Summons is allowed in terms of prayer clause (a) which reads thus :-

(a) that this Court be pleased to condone the delay of 106 days in filing the Written Statement of Defendant No.1 and the Written Statement filed by Defendant No.1 be taken on record;

4. This is however subject to the condition that

Defendant No.1 shall pay costs of Rs.50,000/- to the Tata Memorial Centre (to be used for Research) within a period of two weeks from today and file a receipt evidencing the payment of costs on the record of this Court. Once the costs are paid, defendant No.1 shall file its Written Statement in the Registry within a period of one week thereafter and serve a copy of the same on the Advocates for the Plaintiff. It is made clear that if the costs are not paid within the time stipulated, this Chamber Summons shall stand dismissed without further reference to the Court.

5. All parties including the Tata Memorial Centre to act on an ordinary copy of this order. The Chamber Summons is accordingly disposed off.

(B.P. COLABAWALLA, J.)