

05.03.2021
Sl. No. 18
srm

C.O. No. 378 of 2020

Nibedita Das
Vs.
GBM Manufacturing Private Limited

Mr. Sanjib Dawn,
Mr. Samrat Mukherjee

...for the Petitioner.

Mr. S. Ghose,
Ms. A. Bansal,
Ms. T. Bhattacharyya

...for the Opposite Party.

This revisional application has been filed by the defendant in Title Suit No.1360 of 2018 pending before the learned 6th Bench, City Civil Court at Calcutta. The petitioner is aggrieved by an order dated December 4, 2019 by which the learned Court below refused to accept the written statement filed on behalf of the defendant and fixed the suit for *ex parte* hearing.

It is the case of the opposite party that the defendant filed the written statement beyond the period of 120 days in violation of the provision of Order VIII Rule 1 of the Code of Civil Procedure. It is submitted that the written statement ought to have been filed within the aforesaid period or else the defendant would lose his chance to file the written statement, unless the defendant satisfied the Court as to the exceptional

circumstances due to which, the said written statement was filed belatedly. The learned Court below observed that several dates were given to file the written statement but ultimately the written statement was filed on November 19, 2019 which was beyond the period of 120 days. Moreover, the said written statement was filed without assigning any reasons for the delay and presence of exceptional circumstances.

Records reveal that the learned Court below allowed the defendant time to file the written statement and lastly by an order dated August 6, 2019 the learned Court below fixed November 19, 2019 for filing the written statement as a last chance. The defendant filed the written statement on the said date.

The provisions of Order VIII Rule 1 of the Code of Civil Procedure, as mentioned by the learned Court below, which would prevent the defendant from filing the written statement beyond the period of 120 days is quoted below:

“The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defendant:

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 shall not be later than ninety days from the date of service of summons.”

The provisions of the Code of Civil Procedure as contained in Order VIII Rule 1 are that the defendant shall file the written statement not later than 120 days from the date of receipt of summons. This is a procedural law. Procedure is the handmaid of justice and not its mistress. In the decision of **Sambhaji & ors. vs. Gangabai & ors.** reported in **2008 (17) SCC 177**, the Apex Court while interpreting Order 8 Rule 1 held as follows:-

“6. By the 1999 Amendment Act the text of Order 8 Rule 1 was sought to be substituted in a manner that the power of the court to extend the time for filing the written statement was so circumscribed as would not permit the time being extended beyond 30 days from the date of service of summons on the defendant. Due to resistance from the members of the Bar against enforcing such and similar other provisions sought to be introduced by way of amendment, the Amendment Act could not be promptly notified for enforcement. The text of the provision in the present form has been introduced by the Amendment Act with effect from 1-7-2002. The purpose of such-like amendments is stated in the Statement of Objects and Reasons as “to reduce delay in the disposal of civil cases”.

7. The text of Order 8 Rule 1, as it stands now, reads as under:

‘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.’

8. Order 8 Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the

extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. Substituted Order 8 Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases, causing inconvenience to the plaintiffs and the petitioners approaching the court for quick relief and also the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

9. All the rules of procedure are the handmaids of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

*11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. A procedural law should not ordinarily be*

construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

12. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A Procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

Thus, in all fairness, when the defendant filed by the written statement on the last date fixed by the learned Court below, the defendant cannot be denied an opportunity to contest the suit especially, in an adversarial form of litigation. No party should be prejudiced by an act of Court and if the Court has fixed a date for filing of the written statement beyond 120 days, the litigant cannot be faulted. Moreover, the said application could not be accepted on earlier dates because the local Bar had refrained from work.

Once the written statement has been filed on the date fixed by the Court, I do not think the order impugned can be allowed to stand. The impugned order is set aside.

The leaned Court below shall accept the written statement filed by the defendant provided that costs of Rs.3,000/- is paid by the defendant to the plaintiff in cash within ten days from date. A receipt shall be granted by the opposite party. Upon satisfaction by the learned Court below that the cost has been paid, the suit shall proceed in

accordance with law. In default, the written statement shall not be accepted.

With the above observation, the revisional application is disposed of. This court has not entered into merits of the suit.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)