

AD. 11.
August 16, 2021.
MNS.

C. O. No. 2863 of 2019
with
CAN 1 of 2019(CAN 12516 of 2019)
(Via video conference)

Uni System Private Limited
Vs.
Arun Kumar Dalmia

Mr. Shyamal Chakraborty,
Mr. Rajdeep Bhattacharyya,
Ms. Manju Jaiswal

... for the petitioner.

Affidavit-of-service filed in Court today be
taken on record.

Despite service, none appears on behalf of
the opposite party.

By the impugned order dated July 8, 2019,
the court below permitted the plaintiff-opposite
party to file an amended plaint in terms of its
order dated April 17, 2019, which is also
impugned in the present revision.

It is argued by learned counsel for the
defendant-petitioner that the order dated July 8,
2019 was passed in violation of Order VI Rule 18
of the Code of Civil Procedure, since the said
provision categorically stipulates that an
amended plaint has to be filed within fourteen

days from the date of the amendment order, in the event no time is specified for the purpose.

In the present case, by the parent order dated April 17, 2019, the trial court had allowed the amendment application, specifically directing the plaintiff-opposite party to file amended plaintiff. Such order contemplated filing of the amended plaintiff in the meantime “within statutory period” upon service of copies to the defendant. Although the expression “meantime” can be interpreted also to be till the next date of hearing, which was May 29, 2019, the qualifying expression “within statutory period” restricts such period to fourteen days after the passing of the amendment order, which is April 17, 2019. In any event, despite getting such opportunity, defective amended plaintiffs were filed twice by the plaintiff subsequent to the initial order of amendment, despite which the trial court permitted the plaintiff to file a proper amended plaintiff by its order dated July 8, 2019, which was almost three months subsequent to the order of amendment, without any cause for such delay being made out by the plaintiff.

Hence, in view of the plaintiff-opposite party having violated the provisions of Order VI

Rule 18 of the Code, the trial court acted without jurisdiction in allowing such properly amended plaint to be filed after the period stipulated in the order dated April 17, 2019.

Hence, order No. 65 dated July 8, 2019, being passed without jurisdiction, has to be set aside. However, the validity of order No. 62 dated April 17, 2019 is not automatically taken away by the non-compliance of Order VI Rule 18 of the Code.

As such, C. O. No. 2863 of 2019 is partially allowed, thereby setting aside order No. 65 dated July 8, 2019 and directing the trial court to expunge any amended plaint, if filed, pursuant to the order dated July 8, 2019 in the meantime.

However, the opposite party will be at liberty to make an appropriate application for condonation of delay in filing the plaint and the trial court will be at liberty, upon hearing both sides and recording clear satisfaction, or otherwise, as to the reason for the delay, to dispose of such application in accordance with law, without being influenced in any manner by any of the observations made hereinabove. However, such application has to be mandatorily taken out by the plaintiff-opposite party within a

fortnight from the date of communication of this order to the opposite party and/or the learned advocate appearing for the opposite party in the court below, whichever is earlier.

In the event no such application is made within the above period, order No. 62 dated April 17, 2019 shall automatically stand vacated, leaving no further opportunity for the plaintiff-opposite party to take advantage of the short window of benefit given in this order.

The petitioner shall communicate this order, along with a server copy of the same, on the opposite party and/or the learned advocate appearing for the opposite party in the court below, at the earliest to ensure due compliance of the same.

The trial court shall also record satisfaction as to such service, at the time of considering any application, if made by the plaintiff-opposite party, for condonation of delay in presenting the amended plaint.

The parties as well as the court below and all concerned shall act upon the aforesaid communication by the learned advocate for the petitioner, accompanied by a server copy of this

order, without insisting upon prior production of a certified copy thereof.

In view of disposal of the main revisional application, the connected application, bearing CAN 1 of 2019 (CAN 12516 of 2019), is also disposed of accordingly.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)