

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.04.2021

Pronounced on: 20.04.2021

Coram::

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.Nos.2056 & 2064 of 2020
in C.S.(Comm.Div).No.684 of 2019

STANFORD LABORATORIES PVT.LTD,

5th Floor, Caddie Commercial Tower,

Aerocity, New Delhi 110 037,

Represented by its Directors

... Applicant/2nd Defendant
in A.No.2056 of 2020

/versus/

1. CENTAUR PHARMACEUTICALS PVT. LTD,

Centaur House, Shantinagar, Vakola,

Santacruz (E), Mumbai,

Represented by its Directors through Ms.Rakhi Kadam,
Authorised Signatory.

2. KIBOW BIOTECH INC,

4781, West Chester Pike, Newtown Square,

PA 19073, United States of America,

Represented by its Directors through Ms.Rakhi Kadam,

Authorised Signatory

... Respondents/1 & 2 Plaintiffs

Prayer in A.No.2056 of 2020:- Application is filed under Order XIV and Rule 8 of Original Side Rules and read with under Order VIII Rule 1 of the Civil Procedure Code as amended by the Commercial Courts Act, 2015.

To condone the delay of 44 days in filing of the written statement along with Counter claim by the second defendant in the above C.S.(Commercial Division) No.684 of 2019?

LA RENON HEALTH CARE PVT. LTD,

207-208 ISCON Elegance, Circle P,
Prahlad Nagar Cross Roads, SG Highway,
Represented by its Directors

... Applicant/1st Defendant
in A.No.2064 of 2020

/versus/

1. CENTAUR PHARMACEUTICALS PVT. LTD,

Centaur House, Shantinagar, Vakola,
Santacruz (E), Mumbai,
Represented by its Directors through Ms.Rakhi Kadam,
Authorised Signatory.

2. KIBOW BIOTECH INC,

4781, West Chester Pike, Newtown Square,
PA 19073, United States of America,
Represented by its Directors through Ms.Rakhi Kadam,
Authorised Signatory

... Respondents/1 & 2 Plaintiffs

Prayer in A.No.2064 of 2020:-Application is filed under Order XIV and Rule 8 of Original Side Rules read with under Order VIII Rule 1 of the Civil Procedure Code as amended by the Commercial Courts Act, 2015

To condone the delay of 30 days in filing of the written statement by the first defendant in the above C.S.(Commercial Division) No.684 of 2019.

For Applicant : Mr.Vineet Subramanian
(Both Applications)

For Respondents : Mr.Satish Parasaran, Sr. Counsel
(A.No.2056 of 2020) for Mr.T.Sai Krishnan

For Respondents :Mr.P.H.Arvinth Pandian,Sr. Counsel
(A.No.2064 of 2020) for Mr.T.Sai Krishnan

COMMON ORDER

To condone delay in filing their written statements in the suit filed by the plaintiffs alleging infringement of the Indian Patent No.224100, the defendant Nos.1 and 2 have filed these applications.

2. The period of limitation prescribed under Order VIII Rule 1 of C.P.C as amended by the Commercial Courts Act, 2015, for filing the written statement is 30 days from the date of receipt of the suit summons. The Court may allow to file written statement on such other day as may be specified, for reasons recorded and on payment of such costs, the Court may deem fit but it shall not be later than 120 days from the date of service of suit summons.

3. In the present case, the 1st defendant, who is the applicant in Application No.2064 of 2020 received the suit summons on 23.01.2020. The 30

days limitation period expired on 22.02.2020. As per the time limit prescribed under the code, the upper limit with condonation of delay expired on 23.05.2020. Whereas, the written statement e-filed on 14.07.2020. Relying upon the order passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3/2020, the applicant/1st defendant computing the period of delay from 23.02.2020 to 23.03.2020, pray for condonation of 30 days delay on the ground that, he was not able to file the written statement within the 30 days limitation period since, the defendant was conducting various laboratory tests to establish their defence. Being a patent matter and highly technical in nature, the defendants/applicants require ample Research, Tests and Information to collect prior to drafting the written statement.

4. For the similar reason, the 2nd defendant, who is the applicant in Application No.2056 of 2020, who received the suit summons on 10.01.2020 and ought to have filed the written statement by 09.02.2020 had e-filed the written statement on 14.07.2020 and seek condonation of 44 days delay in filing the written statement.

5. The Learned Senior Counsels appearing for the applicants/defendants rely upon the suo motu Writ Petition (Civil) No.3 of 2020 order of the Hon'ble Supreme Court passed on 23.03.2020 “In Re:Cognizance for extension of Limitation” and the Notification No.143 of 2020 dated 13.07.2020, issued by the High Court of Madras pleaded that written statement was e-filed immediately on partial relaxation of lockdown vide Notification No.143 of 2020. The hard copy of the written statement submitted in the Registry on 25.08.2020. Further, referring the subsequent order passed by the Hon'ble Supreme Court on 08.03.2021 in the Suo motu Writ petition (Civil) No.3 of 2020, the Learned Counsels submitted that the Hon'ble Supreme Court, while finally disposing the Writ Petition, had given direction regarding computation of limitation, wherein, the Hon'ble Supreme Court has clearly saved the period between 15.03.2020 and 14.03.2021 where upper limit with delay prescribed for initiation and termination of proceedings.

6. Per contra, the Learned Counsel for the respondents/plaintiffs strongly oppose the application on the ground that, the limitation prescribed under Order VIII Rule 1 of C.P.C., is non-negotiable as far as suits under Commercial Courts Act, 2015. The judgment of the Hon'ble Supreme Court has so held in

SCG Contracts (India) Ltd -vs- K.S.Chamankar Infrastructure Pvt Limited

reported in **2019 (12) SCC 210**. The applicants had wrongly computed the period of limitation. The period of limitation prescribed under the law for filing the written statement expired on 22.02.2020 for the 1st defendant. The period of limitation prescribed under the law for filing written statement expired on 09.02.2020 for the 2nd defendant. The upper limit of 120 days, with condonation expired for the 1st defendant on 23.05.2020 and for the 2nd defendant on 10.05.2020. While so, when the limitation prescribed expired before the Hon'ble Supreme Court Order in *Suo Motu Writ Petition No.3 of 2020* dated 23.03.2020, “In re: Cognizance for extension of limitation”, the benefit is not applicable to the applicants.

7. In support of this submission, the Learned Counsel appearing for the respondents/plaintiffs also rely upon the judgment of the Hon'ble Supreme Court rendered in ***Sagufa Ahmed and Others -vs- Upper Assam Plywood Products Pvt Limited and Ors*** reported in **2021 (2) SCC 317**.

8. The facts as found from the pleadings as well as from the records, in the instant case, the period of 30 days to file written statement expired before the order passed by Supreme Court dated 23.03.2020 “In re: Cognizance for

extension of Limitation” which was given retrospective effect from 15.03.2020. This order came to be passed taking suo motu cognizance of the pandemic situation prevailing across the Country and to obviate difficulties faced by the litigants, come to Court physically and file their pleadings. In exercise of the power under Article 142 of the Constitution read with Article 141 of the Constitution, the Hon'ble Supreme Court ordered the period of limitation prescribed under the general law or special laws, whether condonable or not shall stand extended w.e.f 15.03.2020.

9. While considering whether the extension of time meant by the Hon'ble Supreme Court in its order dated 23.03.2020 covers the period upto which delay can be condoned in exercise of discretion conferred by the statute, a three judges bench of the Hon'ble Supreme Court clarified in ***Sagufa Ahmed -vs- Upper Assam Plywood Products Pvt Limited*** cited supra as below:-

“17. But we do not think that the appellants can take refuge under the above order in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343] . What was extended by the above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine

SC 343] of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343] passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is vigilantibus et non dormientibus jura subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”

10. In SCG Contracts (India) Ltd -vs- K.S.Chamankar Infrastructure Pvt Limited cited supra at paragraph Nos.15 and 16, the Hon'ble Supreme Court has held as below:-

“15. The learned counsel appearing for the respondents then argued that it cannot be assumed that the learned Single Judge did not know about these amendments when he passed the first impugned order dated 5-12-2017 [SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., 2017 SCC OnLine Del 12768]. We do not wish to enter upon this speculative arena. He then argued

that since this judgment permitted him to file the written statement beyond 120 days, it was an act of the court which should prejudice no man. This doctrine cannot be used when the res is not yet judicata. The 5-12-2017 order [SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., 2017 SCC OnLine Del 12768] is res sub judice inasmuch as its correctness has been challenged before us.

“16. The learned counsel for the respondents then strongly relied upon the inherent powers of the court to state that, in any case, a procedural provision such as contained in the amendment, which may lead to unjust consequences can always, in the facts of a given case, be ignored where such unjust consequences follow, as in the facts of the present case. We are again of the view that this argument has also no legs to stand on, given the judgment of this Court in Manohar Lal Chopra v. Seth Hiralal [Manohar Lal Chopra v. Seth Hiralal, 1962 Supp (1) SCR 450 : AIR 1962 SC 527] . In this judgment, the Court held: (SCR p. 470 : AIR p. 536, para 39)

“39. The suit at Indore which had been instituted later, could be stayed in view of Section 10 of the Code. The provisions of that section are clear, definite and mandatory. A court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances. When there is a special provision in the Code of Civil Procedure for dealing

with the contingencies of two such suits being instituted, recourse to the inherent powers under Section 151 is not justified.”

Clearly, the clear, definite and mandatory provisions of Order 5 read with Order 8 Rules 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein.

11. If these two judgments are alone taken into consideration, the written statement filed by the defendants is beyond the period of limitation prescribed and delay in filing the written statement after the expiry of the time prescribed as Limitation cannot be condoned beyond 120 days from the date of receipt of the suit summons even, in the light of the order of the Hon'ble Supreme Court passed on 23.03.2020 “In Re:Cognizance for extension of Limitation”.

12. But then, the Hon'ble Supreme Court vide its order dated 08.03.2021, while disposing the Suo Motu Writ Petition (Civil) No.3 of 2020, had given quietus to the contentious issue by issuing the following directions:-

“2. We have considered the suggestions of the learned Attorney General for India regarding the future course of

action. We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

13. As pointed earlier, in the instant case, the written statements e-

filed on 14.07.2020 i.e., immediately after the Notification No.143 of 2020 dated 13.07.2020 issued by the High Court of Madras, which reads as below:-

“In supersession to the Notification No.134/2020 dated 03.07.2020 and in pursuance of the Resolution of the Hon’ble Administrative Committee dated 12.07.2020 wherein options are given to the Advocates/Parties-in-Person to select mode of filing of case papers either through email or physically in the High Court premises, the following instructions are issued and to be implemented with effect from 14.07.2020:

Instructions for Email Filing:

1. Advocate/Party-in-Person who have chosen to file scanned case papers through email mode, are required to comply all the requirements necessitated in Notification Nos.113/2020 and 122/2020 dated 17.04.2020 and 31.05.2020 respectively.

2. Upon receipt of the case papers through e-mail, the examiners of the Registry will scrutinize the same and if found otherwise in order, then before assigning case number, the Registry will inform the Advocate/Party-in-Person through e-mail for furnishing hard copy of case papers.

3. If case papers found defective, then the same will be intimated to Advocate/ Partyin-Person through e-

mail only and after curing the defects pointed out by the Registry, the Advocate/Party-in-Person shall send clean copy of only such scanned case papers through e-mail. Thereafter, before assigning case number, the Registry will inform the Advocate/Party-in-person through e-mail to furnish hard copy of the case papers.

4. Upon intimation from the Registry for filing hard copy of case papers, Advocate/Party-in-Person are required to file the hard copy of case papers by clearly mentioning the mode of filing ie., “E-MAIL FILING” in the docket sheet.

In addition to the above, Advocate/Party-in-person are required to file a memo containing case details that are sent to Registry through e-mail. The aforesaid case papers shall be filed in the designated Counter installed near South Gate (Gate No.7) of the Madras High Court campus with a separate Drop Boxes kept for collecting case papers pertaining to all branches i.e., Appellate Side, Writ, Criminal Side and Original Side. The said Counter shall function from 10.30 a.m. to 1.30 a.m. on all working days.

Instructions For Physical Filing:

5. Advocate/Party-in-Person who have chosen to

file case papers physically, are required to file the said case papers in the drop box as provided in the High Court campus. Advocate/Party-in-Person shall clearly mention the mode of filing ie., “PHYSICAL FILING” in the docket sheet of case papers and also mention their mobile number and e-mail id in the docket sheets.

6. After due fumigation process, the Registry will scrutinize the case papers so received and if found otherwise in order, then the Registry will proceed further.

7. If case papers found defective, then the same will be intimated to the Advocate/Party-in-Person through email or through other means of communication. After curing the defect(s) pointed out by the Registry, the clean copy of such paper(s)/document(s) alone is/are required to be submitted at the very same filing counter. In addition to the above, Advocate/Party-in-Person shall submit a memo containing an undertaking that they will take steps to rectify the corrections required to be made in the original case papers as such found in clean copy of case papers after resuming regular court functioning.”

14. On considering the subsequent order of the Hon'ble Supreme

Court dated 08.03.2021, this Court is of the view that the delay of filing the written statement in this case has to be condoned, since, for computation of limitation the period from 15.03.2020 to 14.03.2021 has to be excluded.

15. In the result, the *Application Nos.2056 & 2064 of 2020 are Allowed on costs.* The each applicant to pay a cost of Rs.50,000/- to the plaintiffs on or before 20.05.2021. Failing which, the applicants/defendants shall forfeit the right to file the written statement. Post the suit on 11.06.2021

20.04.2021

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-speaking order

bsm

सत्यमेव जयते

WEB COPY

Dr.G.Jayachandran,J.

bsm



Pre-delivery common order in
A.Nos.2056 & 2064 of 2020
in C.S.(Comm.Div).No.684 of 2019

WEB COPY

20.04.2021