

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
In an Appeal from Order passed in
Admiralty Jurisdiction
(Commercial Division)
ORIGINAL SIDE

APDT/8/2022
WITH
AS/2/2020
IA NO: GA/1/2022

MAHINDRA VEHICLE MANUFACTURERS LIMITED
-VERSUS-
THE OWNERS AND PARTIES INTERESTED IN THE VESSEL
MV HAN XIN (IMO NO.9125889)

BEFORE:
The Hon'ble JUSTICE HARISH TANDON
AND
The Hon'ble JUSTICE SHAMPA DUTT (PAUL)
Date : 2nd August, 2022.

Appearance:

Mr. Dhruva Ghosh, Sr. Adv.
Mr. K. Thaker, Adv.
Mr. Joydeep Guha, Adv.
...for the appellant.

Mr. Ratnanko Banerjee, Sr. Adv.
Mr. Swatarup Banerjee, Adv.
Mr. Souvik Kundu, Adv.
Ms. Swarnalipi Barua, Adv.
...for the respondents.

The Court : The instant appeal arises from an order dated 16th June, 2022 passed by a Single Bench in GA/8/2022, whereby and whereunder

an application for condonation of delay in complying with the direction dated 24th April, 2022 was rejected.

Before we proceed to deal with the points urged before us by the respective Counsel in a limited compass as to whether the Court can extend the time to put in the deficit court fee in supersession of an order dated 24th April, 2022 wherein the condition was imposed to put in the deficit court fee within a specified time and the consequence as to the dismissal was also provided therein, we need to discuss the facts of the case at hand.

Shorn of unnecessary details and for the limited purpose of the points canvassed before us, the facts as it emerges from the record proceeds that the Admiralty suit was filed by the appellant praying for arrest of the respondent vessel MV Han Xin, flying the flag of Hong Kong at Kolkata Port. An application was moved for an interim order on 24th April, 2020 and the direction was passed to arrest the said vessel along with her tackle, hull, engine, equipment, apparels, furniture and all movables lying on board. Since the requisite court fees were not put in by the appellant, leave was granted to the advocate-on-record of the appellant to act as a receiver for the purpose of payment of deficit court fees within a week from the date when the normalcy in functioning of the Court resumes. However, the Court also put a default clause

that in the event the same is not put in within the stipulated time, not only the application but the suit shall stand dismissed automatically without further reference to court. Admittedly, several steps were taken on the said application as well as the suit but the deficit court fee as indicated above was not put in within the stipulated time and the moment such deficiency was realised, an application was taken out by the appellant for condonation of delay in putting in the court fee.

The facts which would emanate from the said application runs into several pages manifest that after the said order dated 24th April, 2020, the advocate-on-record who was appointed as receiver, was paid a sum of Rs.50,000/- with the profound hope that those would be put in by him in compliance to the aforesaid order. It is further averred that the appellant was vigilant in enquiring about the progress of the said suit and the application and an information was given that an application for variation and/or vacating the said order has been taken out by the respondent which has not been disposed of as yet. Subsequently, the appellant took change from the said advocate-on-record and instructed the present advocate-on-record to enquire into the matter and during the enquiry it appears that the deficit court fee was not put in within the time indicated in the said order dated 24th April, 2020. It is further stated that the State of West Bengal declared a lockdown in the month of May, 2021 due to further relapse of the Covid-19 pandemic and the normal functioning of the Court was also

compromised to a great extent and immediately thereafter the application was taken out for condonation of the delay to put in the deficit court fee.

By the impugned order, the Single Bench dismissed the said application on the premise that the appellant was represented throughout the proceedings and in fact, contested the same having a full knowledge and notice on the obligations foisted upon it by the said order dated 24th April, 2020 and since the deficit court fees were not put in within the stipulated time, the appellant does not deserve any sympathy nor leniency can be shown to its conduct.

The point which emerged in the appeal pertains to discretion to be exercised by the Court in extending the time to put in the deficit court fees. It is no doubt true that the entire globe suffered by the pandemic and the normal functioning of the institutions were compromised including the judicial system. The judiciary was functioning in a limited manner because of its obligation to the citizens to dispense with the justice as and when the injustice is caused to them. It is an obligation of the Court to be accessible to a litigant despite the adversities it faced because of the Covid-19 pandemic. It is often said, that necessity is the mother of an invention and it is equally true that such necessity augments the molding of the functioning as well as the work culture throughout the globe. The virtual hearing is one of the steps which has been adopted to reach the litigant and/or the common people who aspire for justice. Since the court fees were not readily available, the undertaking was sought from the litigant to put in the court fees as and when the normalcy is resumed; precisely

for such reason the Court appointed the advocate on record of the appellant as receiver to put in the Court fees within one week from the date when the normalcy is resumed in this Court.

The court fee is a matter concerning the plaintiff and the exchequer with an intent to ease out the burden on the exchequer in maintaining the judicial system. The judiciary was not an exception to the sufferance of the pandemic and the obstacles having created in reaching out to it in pursuit of the justice.

The Apex Court in a suo motu proceedings passed several orders pertaining to the limitation Act realising the difficulties of the litigants in pursuing the reliefs within the time limited thereby. Several orders were passed in cognizance for extension of the limitation and ultimately the said proceedings ended upon the last extension being made in the year 2022. Since the aforesaid suo motu proceeding was restricted to the applicability of the Limitation Act provided for various proceedings, a suo motu proceeding being WPA 5323 of 2020 was initiated by this Court comprising of Five Hon'ble Judges. In the said suo motu proceeding the Court has confined its consideration to the conditional orders being passed in a judicial proceedings and the consequences that would follow therefrom in the event the same is not complied with. The orders were passed by the said Bench to the extent that all other conditional orders of the Court will continue to remain in operation until further order notwithstanding the non-fulfillment of the conditions imposed.

Ultimately, by an order dated 17th January 2022 all such conditional orders of the Court were directed to operate till 28th February 2022 and, therefore, the benefit of the said order should be extended to the appellant. On 24th April, 2020 the conditional order was passed for putting in the deficit court fee within a timeframe followed by a default clause. Since the said order was a conditional one and by virtue of an order passed in a suo motu proceedings initiated by this Court, the same was extended till 20th February, 2022, the effect of the default clause gets extended by such judicial order. Though the application was taken out at a relevant point of time when the order passed in a suo motu proceedings was operative, yet it can be presumed to have been filed as a precautionary measure. The single Bench was not apprised of the fact that the expression “all other conditional orders” imbibed within itself the order in the nature as was passed on 24th April, 2020 and therefore ought to have exercised judicial discretion in a judicious manner.

Even apart hypothetically if we overlook the order of this Court passed in a suo motu proceedings, the Court ought to have considered that the object and purpose of putting in the court fee is not to defeat the right or dislodge the litigant but for the purpose of easing out the burden of the exchequer in maintaining the judicial system. Even though it is conceived that the Court should not proceed to pass any order unless the court fees are putting, yet it does not fetter the power of the Court to extend the time bearing in mind its object and the purpose behind its incorporation. Normally, the appellate Court

should not interfere with the discretionary order. Equally, the appellate Court may interfere in the event such discretion is exercised in capricious manner. Keeping the object and the purpose for promulgation of the Court Fees Act, we think that the single Bench ought to have exercised the discretion in extending the time although the same was not required in view of the order passed in a suo motu proceedings initiated by this Court.

The order impugned is thus set aside. The application filed by the appellant is allowed.

The appellant is directed to put in the court fees by 4th August, 2022.

The appeal and the application are thus disposed of.

[HARISH TANDON, J.]

[SHAMPA DUTT (PAUL), J.]

Later:

After the judgment is delivered in the open court the learned Advocate appearing for the respondent prays for stay of the operation of the instant order.

After considering the submissions, we do not find any reason why should we stay of operation of the instant order. The prayer is refused.

[HARISH TANDON, J.]

[SHAMPA DUTT (PAUL), J.]