

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

OSA (CAD) Nos.167 & 168 of 2021

Straight line Cinemas

Rep, by its Propreitor Mr.Sudhir V.K

Krishna Bhat tower

Pullepady Road

Ernakulam - 682 035.

...Appellant in both OSAs

Vs.

Dream Warrior Pictures

Rep. by its Partner Mr.S.R.Prabhu

No.17/8, flat No.1, Ganapathi Apartments

Krishna Street, T.Nagar

Chennai -600 017.

...Respondent in both OSAs

Prayer in OSA (CAD) No.167 of 2021 : Appeal filed under Section 13(1) of the Commercial Courts Act, 2015 read with Clause 15 of the amended Letters Patent Act, 1865, against the order dated 13.07.2021 in C.S. (Comm. Div.) No.310 of 2020.

Prayer in OSA (CAD) No.168 of 2021 : Appeal filed under Section 13(1) of the Commercial Courts Act, 2015 read with Clause 15 of the amended Letters Patent Act, 1865, against the order dated 01.10.2021 in C.S. (Comm. Div.) No.310 of 2020.

For the Appellant

in both OSAs

: Mr.S.Sivaraman

For the Respondent

in both OSAs

: Mr.S.S.Swaminathan

JUDGMENT

(Judgment of the Court was delivered by
the Hon'ble Acting Chief Justice)

By these appeals, challenges are made to the order dated 13.07.2021 holding that the appellant-defendant has lost its rights to file the written statement and the judgment dated

01.10.2021 decreeing the suit filed by the plaintiff-non-appellant respectively.

2. Learned counsel for the appellant submits that after service of notice in the suit, the appellant-defendant entered appearance through counsel. However, the written statement could not be filed due to the situation obtaining at the relevant time. Ignoring the aforesaid, the right of the appellant-defendant to file the written statement was closed by the order dated 13.07.2021 and therefore, the order has been challenged herein.

3. Subsequently, a final order was passed on 01.10.2021 without the written statement of the appellant-defendant. The said order has been challenged contending that the Apex Court in the similar circumstances, by order dated 04.01.2021, dismissed the appeal filed against the order of the High Court extending the period of limitation to submit the written statement.

4. The order dated 13.07.2021 whereby the right to file the written statement by the appellant was closed by the learned Single Judge and the final order dated 01.10.2021 passed thereafter, have been assailed in separate appeals. Therefore, both the appeals are taken up by us for hearing together.

5. A perusal of the order dated 13.07.2021 would disclose closure of rights to file the written statement was mainly on the ground of limitation to file the written statement.

6. Learned counsel for the appellant submits that the plaint was filed in the year 2020 and the appellant-defendant put in appearance through the counsel on 23.11.2020. The right to file the written statement was closed on 13.07.2021 itself. The Apex Court, in a similar matter in Centaur Pharmaceuticals Pvt. Ltd. v. Stanford Laboratories Pvt. Ltd. [SLP No.17298 of 2021 dated 04.01.2021], did not interfere with the order passed by the High Court extending the limitation for filing written statement. In view of the above, the order dated 13.07.2021, closing the right of the appellant-defendant to file the written statement is to be set aside and also the final order dated 01.10.2021 with a direction to the learned Single Judge to decide the suit afresh after considering the written statement.

7. The appeals have been contested by learned counsel for the non-appellant-plaintiff. It is mainly on the ground that when the period of limitation has been provided for filing the written statement, it could not have been extended by the learned Single Judge hearing the plaint and thus, the right to file the written statement was rightly closed by the order dated 13.07.2021 and the final order was also passed on 01.10.2021

after considering the evidence. In view of the above, even the final order dated 01.10.2021 may not be interfered with.

8. We have considered the rival submissions of the parties and perused the materials placed on record.

9. We find that the suit has been preferred in the year 2020 and the right to file the written statement was closed by the order dated 13.07.2021 on the ground that the limitation for filing the written statement has expired, ignoring the fact that the period for filing can be extended. It is not only that the Apex Court in the case of Centaur Pharmaceuticals Pvt. Ltd. *supra* has refused to interfere with the order passed by the High Court in extending the period of limitation of filing of the written statement, but even in catena of detailed judgments, the Apex Court interpreted the provision of Civil Procedure Code holding period of limitation for written statement to be not mandatory in nature, but only directory. The Court hearing the plaint can extend the period of limitation on justified reasons.

10. In the instant case, the period relevant to the case is between November 2020 and July 2021. It is known that lockdown was imposed in March 2020 and the period subsequent to it was excluded by the Court for all purposes, which includes limitation. The aforesaid shows one part to justify the extension of limitation and otherwise, we find that the written statement cannot be closed on the ground of limitation alone. Rather, in appropriate cases, the limitation can be extended. It would, however, not be that in all cases, extension should be granted. Rather, if no justification is given, the Court can refuse to extend the period of filing the written statement. In the case, we find that the period intervening after the filing of suit remain under the Covid-19 pandemic, which was not only started from March 2020, but also subsequently due to the second surge of Covid-19.

11. Taking the aforesaid into consideration, we find reasons to set aside the order dated 13.07.2021 closing the right of the appellant-defendant to file the written statement and accordingly, the appeal challenging the aforesaid order is allowed, with a direction to the appellant-defendant to file the written statement within a period of two weeks from today.

12. As we have set aside the order dated 13.07.2021 with the direction to file the written statement within the period given above, the final order dated 01.10.2021 passed without the written statement is also liable to be set aside. Accordingly, the final order dated 01.10.2021 is also set aside. It is made clear that if the written statement is not filed within the period of two weeks from today, the right to file the written

statement would be closed and the learned Single Judge may proceed further from the aforesaid stage.

13. Since we have set aside the final order dated 01.10.2021 and permitted the appellant-defendant to file the written statement, the matter would now proceed further from the stage of filing of the written statement and accordingly, whatever position was obtaining at the stage of filing of the written statement, the same would operate now.

14. OSA (CAD) Nos.167 and 168 of 2021 are allowed with the above directions. There will be no order as to costs. Consequently, CMP Nos.21717 and 21724 of 2021 are closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

kpl/drm

To:

The Sub Assistant Registrar
Original Side
High Court, Madras

+2ccs to Mr.S.S.Swaminathan, Advocate Sr.No.1854, 1855

+2ccs to Mr.S.Sivaraman, Advocate Sr.No.1890, 1891

OSA (CAD) Nos.167 & 168 of 2021

SSI(CO)
RVM(20/01/2022)