

IN THE HIGH COURT AT CALCUTTA

(Civil Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.O. 171 of 2023

Uni System Private Limited

Vs.

Arun Kumar Dalmia

For the Petitioner :Mr. Shyamal Chakraborty, Adv.
Ms. Shefalica Bhattacharya, Adv.
Ms. Manju Agarwal, Adv.

For the Opposite party :Mr. Krishna Das Poddar, Adv.

Heard on : May 08, 2023

Judgment on : May 12, 2023

Bibhas Ranjan De, J.

1. This revision application has been filed challenging the order no. 89 dated 15.11.2022 in connection with Ejectment Suit No. 356 of 2012 passed by Learned Judge, Bench II, Presidency Small Cause Court, Calcutta.

2. Learned Judge accepted the amended plaint filed by the plaintiff on 8th July 2019.

3. Learned advocate Mr. Shyamal Chakraborty, appearing on behalf of the petitioner/defendant has submitted that on 17.04.2019 one amendment application under Order 6 Rule 17 of the Civil Procedure Code has been filed by the opposite party/ plaintiff. It is further submitted that on successive occasions plaintiff filed incorrect amended plaint that too in violation of statutory period under Order 6 Rule 17 of the Civil Procedure Code. Ultimately, plaintiff filed 3rd amended plaint on. 08.07.2019 without serving any copy thereof upon the petitioner/defendant. Said amended plaint was again rejected by the Learned Trial Judge giving liberty to filed fresh amended plaint imposing costs of Rs. 1000/-. Petitioner/defendant challenged the Order dated 8th July, 2019 by filing a Civil Revision being no. Co 2863 of 2019 before this Court and that was disposed of 16.08.2021 giving an ultimate liberty to the opposite party/plaintiff to take out an application for condonation of delay in filing the amended plaint within a fortnight from the date of communication of the order to the opposite party/plaintiff Hon'ble Court also

directed all parties and court below to act upon the aforesaid communication by the learned advocate for the petitioner/defendant, accompanied by server copy of the order.

4. According to Mr. Chatterjee the order was communicated to the opposite party/plaintiff vide letter dated 19.08.2021 which was delivered on 23.08.2021. But, application for condonation of delay was filed on 18.01.2022 pursuant to the order passed in C.O. 2863 of 2019 i.e. after gap of 4 month 11 days and that too without explaining any reason of delay. The said application was allowed by the order impugned.

5. Learned advocate, Mr. Krishna Das Poddar, appearing on behalf of the opposite party/defendant relied on the order passed by the Hon'ble Apex Court in Suo Motu Writ Petition (C) No. 3 of 2020 wherein Hon'ble Apex Court observed:-

“In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022. notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining. With effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

6. Only question before this Court whether the order passed by the Hon'ble co-ordinate Bench on 16.08.2021 was complied

with by the opposite party/plaintiff in filing application of condonation of delay.

7. From the order passed in Suo Motu Writ Petition (C) No. 3 of 2020, I find that Hon'ble Apex Court excluded the period of limitation from 15.03.2020 till 28.02.2022. From that point of view I do not find any infirmity or illegality in accepting the amended plaint by the order impugned. While delay was explained to the effect suffering from various elements.
8. With the aforesaid observation the instant revision application being no. C.O. 171 of 2023 stands dismissed.
9. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
10. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]