

\$~71

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 12.05.2023

+ CM(M) 700/2023, CM APPL. 2952/2023 &
CM APPL. 21953/2023

DR ER RAJAINDERR JAINA

..... Petitioner

versus

RAHUL JAINA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Nemo.

For the Respondents : Mr. Dinesh Kumar Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 10.03.2023 in CS No. 58585/2016 filed by the petitioner, titled as "*Dr. Er Rajainderr Jain Versus Rahul Jaina*" whereby an application under Order VI Rule 18 filed on behalf of the respondent/defendant was allowed and simultaneously the application under Section 151 of CPC, 1908 filed on behalf of petitioner/plaintiff seeking condonation of delay in filing the amended plaint, was dismissed.

2. Vide order dated 13.02.2019, learned Trial Court had allowed the

application under Order VI Rule 17 of CPC, 1908 and simultaneously had noted that the amended plaint is taken on record. It further directed the respondent/defendant to file its amended written statement.

3. It transpires from the impugned order as also from the record as filed by the petitioner/plaintiff herein, that the amended plaint appears to have not been filed on or before 13.02.2019.

4. Since the amended plaint was not filed, the respondent had filed an application under Order VI Rule 18 of CPC, 1908 filed on 30.04.2019 seeking closure of the right of the petitioner/plaintiff to file their amended plaint since the same was not filed despite directions dated 13.02.2019.

5. From the record, it is revealed that inspite of filing the reply to the application under Order VI Rule 18 of the CPC, 1908, the plaintiff/petitioner filed an application under Section 151 of CPC, seeking condonation of delay that too after a lapse of about 20 months. On the aforesaid lapse, the impugned order was passed.

6. Mr. Aggarwal, learned counsel appearing for the petitioner submits that the order dated 13.02.2019 whereby the application under Order VI Rule 18 of CPC, 1908 was allowed, also noted that the amended plaint be taken on record. On that basis, Mr. Aggarwal submits that, ostensibly, amended plaint must have been filed by the petitioner/plaintiff which was directed to be taken on record. Learned counsel submits that this noting vide order dated 13.02.2019 appears to have created confusion.

7. Learned counsel also submits that since the application under

Order VI Rule 17 of the CPC, 1908 was allowed, no prejudice would be caused to the respondent/defendant in case the same is to be filed now, for the reason that requisite objections, as per law, can still be taken by the respondent/defendant against such amendments in his written statement.

8. Learned counsel submits that prejudice, if at all, would be caused, only to the petitioner/plaintiff, in case the amended plaint is not taken on record.

9. Opposing the aforesaid submissions, learned counsel appearing for the respondent vehemently submits that it was only upon the failure to file the amended plaint, as also after ascertaining the said status after inspecting the file, that respondent/defendant was constrained to file application under Order VI Rule 18 of the CPC, 1908 seeking closure of the right to file the amended plaint.

10. Learned counsel also submits that despite filing of the aforesaid application seeking closure of right to file amended plaint, neither any reply was filed nor the amended plaint was filed. Learned counsel also submits that it was only after a lapse of 20 months that the petitioner/plaintiff suddenly woke up and made an attempt to file amended plaint along with the application under Section 151 of the CPC seeking condonation of delay in filing such amended plaint.

11. Learned counsel also submits that no proper explanation or sufficient reason was tendered by the petitioner for not having filed the amended plaint, despite the application filed under Order VI Rule 18 of CPC, 1908.

12. Learned counsel submits that the impugned order does not want interference by this court under Article 227 of the Constitution of India and is sustainable in law. Learned counsel seeks dismissal of the present petition with costs.

13. Learned counsel relied upon the judgments of the learned Division Bench of Madras High Court in *Southern Ancillaries Private Limited vs. Southern Alloy Foundaries Private Limited*, reported as **2023 SCC OnLine Mad. 254**.

14. This court has considered the rival submissions and also the pleadings placed on record along with the orders passed by learned Trial Court.

15. At the outset, it is apparent that noting made by the learned Trial Court in its order dated 13.02.2019, that the amended plaint be taken on record, is an error on facts for the reason that even today when the plaintiff/petitioner had filed the amended plaint, the affidavit in support thereof is stated to have been attested in the month of January, 2022.

16. Learned counsel appearing for the petitioner/plaintiff is also unable to explain as to why the petitioner/plaintiff does not have a copy of the original amended plaint, if at all filed before the learned Trial Court on or before 13.02.2019.

17. On that basis, it appears that the noting by the learned Trial Court in the order dated 13.02.2019 is erroneous and not based on the record available with it.

18. Yet one more inexplicable situation is, as to why the petitioner/plaintiff remained silent and did not take any appropriate

action even after application under Order VI Rule 18 of CPC, 1908 was filed. Inasmuch as neither any reply was filed nor any attempt to file the amended plaint was ever initiated.

19. There is no explanation equally as to why it took 20 months for the petitioner/plaintiff to file the amended plaint along with the application under Section 151 of CPC, 1908 seeking condonation of delay in filing such amended plaint.

20. This court has also perused the amended plaint as placed on record and finds that there is no affidavit in support of such amended plaint which would have given an indication as to when the affidavit in support of the same was attested.

21. Learned counsel appearing for the respondent/defendant has informed that the said affidavit was attested in the month of January 2022.

22. Since there is no way to ascertain the said fact, this court acts upon the submissions made by the learned counsel for the respondent/defendant.

23. Mr. Aggarwal, learned counsel appearing for the petitioner also does not dispute the submissions made by the learned counsel for respondent.

24. Apart from the aforesaid facts, this court has considered the provisions under Order VI Rule 18 of CPC, 1908 which stipulates that in case any such pleading is permitted to be filed under Order VI Rule 17 of CPC, 1908, unless the time is specified by the court, ordinarily, the time ought to be limited to the extent of 14 days.

25. Without going into the interpretation of the aforesaid provision, this court is of the considered opinion that the delay in filing such amended plaint has not been explained properly much less any sufficient or cogent reasons for the immense delay has at all been urged by the petitioner/plaintiff.

26. In that view of the matter, this court is constrained to dismiss the petition and uphold the impugned order passed by the learned Trial Court.

27. The petition and pending applications are consequently dismissed with no order as to costs.

28. Learned Trial Court shall proceed with the matter with original suit as instituted by the petitioner/plaintiff in accordance with law.

TUSHAR RAO GEDELA, J.

MAY 12, 2023
AT