



2024:DHC:7425



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

Delivered on: 12.09.2024

+ **CS(COMM) 70/2020****RENU PROMOTERS PVT. LTD.**

.....Plaintiff

Through: Ms. Sunanda Tulsyan, Mr. Akhil
Sachar and Mr. Sanjay Bansal,
Advocates

versus

**GOVIND RADHE REAL ESTATE PRIVATE
LIMITED & ORS.**

.....Defendants

Through: Mr. Ashwin Vaish and Mr. V.
Thomas, Advocates

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)**

**I.A. 32910/2024 (under Order VIII Rule 10 CPC filed by the
plaintiff seeking striking out the defence of the defendants)**

**I.A. 33005/2024 (under Section 151 CPC filed by the defendant
seeking extension of time)**

1. The IA 32910/2024 has been filed by the plaintiff under Order VIII Rule 10 of CPC. The learned counsel appearing on behalf of the plaintiff submits that the present application may also be treated under Order XXXVII Rule 3(6)(b) of CPC.

2. The present suit was filed by the plaintiff seeking recovery of a sum of Rs. 2,35,00,000/-. The case of the plaintiff is that he had given Rs. 1,85,00,000/- to the defendant which has not been repaid and a



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cheque dated 19.09.2019 was issued by the defendant for a sum of Rs. 2,35,00,000/- including the interest amount in favour of the plaintiff. The said cheque upon presentation for encashment, was returned by the drawee bank with remarks '*Account Blocked*', hence the present suit has been filed under Order XXXVII of the Civil Procedure Code, 1908 for the recovery of the cheque amount.

3. After the defendants were served with the summons for judgment, an application was filed by them seeking leave to defend. However, a conditional leave to defend was granted by this Court *vide* order dated 29.01.2024 whereby the defendants were directed to deposit a sum of Rs. 50,00,000/- within a period of eight weeks with the worthy Registrar General of this Court with the direction to keep the same in FDR in auto renewal mode.

4. The period of 8 weeks to deposit an amount of Rs. 50 lakhs, subject to which the leave was granted, expired on 25.03.2024. During this period the aforesaid condition was admittedly, not complied with by the defendants. This led to the filing of above noted I.A. 32910/2024 by the plaintiff on 04.07.2024.

5. Thereafter I.A. 33005/2024 came to be filed by the defendants on 10.07.2024 seeking extension of time to comply with the condition of deposit of Rs. 50 Lakhs. Clearly, this IA was filed after the filing of I.A. 32910/2024 by the plaintiff and that too almost four months after the time for complying with the condition had already elapsed.

6. In the backdrop of aforesaid factual matrix, Ms. Sunanda Tulsyan, the learned counsel for the plaintiff submits that since the condition subject to which the leave to defend the suit was granted to



the defendants by this Court has not been complied with, the plaintiff is entitled to the judgment forthwith. To buttress her contention, she relies upon the decision of a coordinate bench of this Court in *Navjot Singh Vs. Alexander Das*, 2023 MANU/DE/6603/2023.

7. *Per contra*, Mr. Ashwin Vaish, the learned counsel appearing on behalf of the defendants submits that the present application has been filed by the plaintiff under the wrong provision.

8. He contends that since the time to be granted to furnish the security while granting conditional leave to defend under sub-rule (6)(b) of Rule 3 of Order XXXVII of CPC has been left to the discretion of the Court, therefore, it is well within the jurisdiction of this Court to extend time under Section 151 CPC.

9. He further submits that the said provision does not debar the Court from extending time, therefore, the time fixed by the Court for furnish security or complying with the condition subject to which leave to defend has been granted, can be extended by invoking provisions of Section 148 and Section 151 CPC. In support of his submission, the learned counsel has placed reliance on the following decisions of the Hon'ble Supreme Court:

- i) *Mahanth Ram Das Vs. Ganga Das*, 1961 SCC Online SC 71;
- ii) *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, 1961 SCC Online SC 17; and
- iii) *Salem Advocate Bar Association T.N. Vs. Union of India* (2005) 6 SCC 344

10. I have heard the learned counsel for the plaintiff as well the learned counsel for the defendants.



11. To appreciate the rival submissions of the learned counsel for the parties, it would be relevant to refer sub-rule (6)(b) of Rule 3 of Order XXXVII of the CPC which reads as under:

3. *Procedure for the appearance of defendant—.*

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(6) *At the hearing of such summons for judgment –*

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(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(emphasis supplied)

12. On a plain reading of above quoted sub-rule, it is clear that when the defendant is permitted to defend the suit with a condition and such condition is not complied with within the time as specified by the Court, the plaintiff shall be entitled to judgment forthwith. The sub-rule does not speak of further extension of time by the Court. The use of expression “shall” and “forthwith” in the provision does not leave any discretion with the Court to extend time in case the condition subject to which the leave is granted is not complied with within the time specified by the Court, rather it makes obligatory for the Court to pass the judgment forthwith.



13. The Hon'ble Supreme Court in *Wada Arun Asbestos (P) Ltd. vs. Gujarat Water Supply & Sewerage Board, (2009) 2 SC 432*, has observed that where a conditional leave is granted and the conditions therefore are not complied with, a judgment in favour of the plaintiff can be passed.

14. I am also supported in my view by the decision of a coordinate bench of this Court in *Navjot Singh (supra)*. In the said case, an appeal had been preferred against the judgment and decree passed by the learned trial court under Order XXXVII Rule 3(6)(b) of the CPC on non-compliance of conditions subject to which leave was granted. In the appeal, this Court had observed as under:

“22. In this factual background, the learned Trial Court has followed the procedure of Order XXXVII Rule 3(6)(b) of the CPC, which entitles the plaintiff to judgment forthwith if the defendant fails to comply with any condition upon which leave to defend has been granted. This procedure has been recognized inter alia in the judgment of the Supreme Court in *Wada Arun Asbestos (P) Ltd. vs. Gujarat Water Supply & Sewerage Board, (2009) 2 SC 432*, para 15 and of this Court in *Vikas Bhatia vs. Nikhil Chohan, 2014 SCCOnLine Del 3100*, para 6.”

(emphasis supplied)

15. In so far as submission of Mr. Vaish that the application has been filed by the plaintiff under the wrong provision, suffice to say that mentioning of a wrong provision will not make the application incompetent and the same can always be treated under the correct provision.

16. The reliance placed by the learned counsel appearing on behalf of the defendant on the afore-noted three decisions is misplaced. The



decision in *Mahant Ramdas* (*supra*), lays down the proposition that Section 148 & 149 of the CPC would clothe Courts with ample power to do justice to a litigant for whom it entertained the considerable sympathy, but to whose aid it erroneously felt unable to come. The decision in *Manohar Lal Chopra* (*supra*), lays down the proposition that it is not possible to hold that the provision of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it.

17. Likewise in *Salem Advocate Bar Association* (*supra*), the question before the Court was whether the upper limit of 30 days introduced in Section 148 of CPC by an amendment of 1999 (w.e.f. 2002) can be extended by the Court beyond 30 days. It was held that the object of Court is not to promote failure of justice and Section 148 of CPC deserves to be read down to mean that where sufficient cause exists or events are beyond the control of a party, the Court would have inherent power to extend time beyond 30 days.

18. The decisions relied upon by the plaintiff do not specifically deal with Order XXXVII Rule 3(6)(b) of the CPC. Rule 3 of Order XXXVII contains a provision in the form of sub-rule (7)¹ which contemplates for extension of time provided for entering an appearance or applying for leave to defend in the said Rule itself. The extension of time specified by the Court in Rule 3(6)(b) for complying with the condition subject to which leave is granted, is neither envisaged in sub-

¹ The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.



rule (6)(b) nor in sub-rule (7), of Rule 3. The Order XXXVII is a complete code in itself insofar as summary procedure and timelines prescribed therein are concerned.

19. The object underlying the suit filed under Order XXXVII is to decide the suit summarily if it is premised on – (a) bills of exchange, hundies and promissory notes; or (b) plaintiff seeking recovery of debt or liquidated demand in money arising on - (i) a written contract; or (ii) an enactment; or (iii) a guarantee, as specified in sub-rule (2) of Rule 1 of Order XXXVII, as well as, to prevent unreasonable obstruction by a defendant who has no defence.

20. Further, as noted above, leave was granted by this Court *vide* order dated 29.01.2024 and the period of 8 weeks to deposit an amount of Rs. 50 lakhs, subject to which the leave was granted, expired on 25.03.2024. During this period the aforesaid condition was admittedly, not complied with by the defendants. Even the I.A. 33005/2024 seeking extension of time to comply with the condition to deposit of Rs.50 Lakhs came to be filed by the defendants on 10.07.2024 i.e. almost four months after the time for complying with the condition had expired and that too after the plaintiff had filed I.A. 32910/2024 seeking striking off the defence of the defendants. Thus, there is not only non-compliance of the condition within the time specified but it also shows lackadaisical approach of defendants, which ordinarily would not warrant exercise of powers under Section 148 CPC, even if the same would be available to the Court.

21. On a conspectus of factual matrix and the above noted position of law, the plaintiff is entitled to the judgment forthwith. Thus, the I.A.



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32910/2024 filed by the plaintiff is allowed whereas I.A. 33005/2024 filed by the defendants is dismissed.

22. Accordingly, the suit of the plaintiff for a sum of Rs. 2,35,00,000/- is decreed. Further, the plaintiff is entitled to an interest also. The plaintiff has sought interest @ 18% per annum but no basis for the same has been given nor there is any written contract between the parties governing the rate of interest, therefore, this Court would be guided by Section 34 CPC while awarding the rate of interest. Thus, this Court deems it appropriate to award *pendente lite* and future interest @ 6% per annum. Ordered accordingly.

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23. The suit stands disposed of.

24. Decree sheet be drawn in above terms.

VIKAS MAHAJAN, J

SEPTEMBER 12, 2024

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