

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

Present :
THE HON'BLE JUSTICE ARINDAM MUKHERJEE

G.A. No. 4 of 2023
In
C.S. No. 129 of 2022
IN THE MATTER OF:
RAJESH KUMAR SONTHALIA & ANR.
VS.
ICICI BANK LIMITED & ORS.

For Plaintiff : Mr. Debnath Ghosh, Adv.
Ms. Noelle Banerjee, Adv.
Mr. Siddhartha Sharma, Adv.
Ms. R Dutt, Adv.
Ms. Shaline Banu, Adv.
..... Advocates

For Defendants no. 1 : Mr. Sakya Sen, Adv.
Mr. Ovik Sengupta, Adv.
Mr. Subhankar Chakraborty, Adv.
Mr. Saptarshi Bhattacharjee, Adv.
Ms. Ruchira Manna, Adv.
..... Advocates

Heard on : 29.08.2023

Judgment on : 19th October, 2023

Arindam Mukherjee, J:

The instant application being GA 4 of 2023 has been made by the defendant No.1 in the suit to condone the delay of more than 120 days and allow filing of the written statement.

The defendant no. 1 received the writ of summons on 20th June, 2022 along with a copy of the plaint. This writ of summons was issued on 20th June, 2022. By the said writ of summons, the defendant no. 1 was directed to file the written statement within 35 days from the date of service. The defendant no. 1 did not file the written statement within such time. In the meantime, the plaintiff took out an application for amendment of the plaint. This application was allowed on 4th July, 2022. A fresh writ of summons was issued on 11th July, 2022 which was received by the defendant no. 1 with another copy of the plaint. By the said writ of summons the defendant no. 1 was directed to file the written statement within 35 days from the date of service of the said writ of summons. The defendant no. 1 did not file the written statement 35 days from the date of receipt of the fresh writ of summons (hereinafter for the sake of convenience referred to as the “second writ of summons”).

On 20th July, 2022 an order was passed in the plaintiff's interlocutory application being G.A. 1 of 2022 wherein interim order was refused and direction for affidavits was given. G.A. 1 of 2022 again came up for hearing on 2nd January, 2023 when an interim order was passed in favour of the plaintiff. The defendant no. 1 thereafter took out an application on 20th Feb 2023 inter

alia under the provisions of Order VII rule 11 of the Code of Civil Procedure, 1908 (“CPC”) being G.A. 2 of 2023 for rejection of plaint and/or dismissal of the suit. At the hearing of the said application the defendant no. 1 was permitted to file a supplementary affidavit annexing the plaint as no copy of the plaint was annexed to the application to the said application. It is the case of the defendant no. 1 that in the supplementary affidavit, the said defendant had annexed a copy of the plaint received with the second writ of summons.

G.A. 2 of 2023 came up for hearing after completion of affidavits on 14th March, 2023. In course of hearing of the said application, certain handwritten endorsements were noticed in the copy of the plaint. The original plaint was therefor directed to be produced before the Court. On tallying the copy of the plaint annexed to the supplementary affidavit with the original plaint which was found that the same was different from the original plaint. The plaintiff, therefor, was directed to serve a copy of the plaint with the amendments allowed on 4th July, 2022 inserted therein. On 15th March, 2023 the defendant no. 1 was served with a fresh copy of the plaint. On receipt of the copy of the plaint, the defendant no. 1 found that the said defendant was never served with the amended plaint. The original and/or unamended plaint was served with the second writ of summons. This instant application being GA 4 of 2023 has been filed on 10th July, 2023.

The defendant no.1 says that the time to file the written statement did not commence with the receipt of the writ of summons as the amended plaint was

served only on 15th March, 2023. The time to file written statement should, therefor, be computed from 15th March, 2023 and not from the date of receipt of the first writ of summons. Going by such computations, the defendant no. 1 says that it has approached this Court much prior to expiry of 120 days from the date of receipt of a copy of the amended plaint i.e., 15th March, 2023. The defendant no. 1, therefor, prays that the delay in filing the written statement be condoned and the defendant no. 1 should be permitted to file the written statement.

On behalf of the plaintiff it is submitted that the 120 days period has expired long back. Even if 11th July, 2022 is taken into consideration as the date of issuance of the writ of summons, no written statement has been filed within 120 days from the date of receipt of the writ of summons and as such the defendant no. 1 has forfeited its right to file the written statement in view of the ratio laid down in judgment reported in **2019 (12) SCC 210 (SCG Contracts Private Limited vs. K.S. Chamankar Infrastructure Private Limited and Others)**. That apart and in any event the written statement has been affirmed by the defendant no.1 on 7th July, 2023 well beyond 120 days and such written statement cannot be accepted without condoning the delay. The plaintiff's therefore prayed for rejection of the said application.

In reply the defendant no. 1 says that it was the obligation of the plaintiff to serve a proper copy of the plaint, the amended plaint was served on 15th March 2022. The defendant no. 1 had received on both the occasions i.e., with

the first writ of summons and the second writ of summons a copy of the unamended plaint, the defendant therefor was not obliged to file the written statement within the time frame provided in the writ of summons. The moment the defendant no. 1 detected that the original plaint was served and not the amended one, the said defendant has approached this Court for accepting the written statement which has already been affirmed. There was as such no delay or laches on the part of the defendant no. 1 in filing the written statement. The entire confusion has been created by the plaintiffs by serving a copy of the unamended plaint which has given rise to a peculiar situation wherein the defendant no. 1 should be permitted to file the written statement affirmed on 7th July, 2023.

After hearing the parties and considering the materials on record I find that the defendant no. 1 did not file its written statement pursuant to receipt of a copy of the plaint along with the first writ of summons. The defendant no. 1 did not approach the court for an extension of the time for filing the written statement. The defendant no. 1 also did not file any written statement pursuant to receive of a copy of the plaint along with the second writ of summons. No application was filed even then for an extension of time to file written statement. Thus 120 days time period has elapsed from the receipt of the first writ of summons as also from the date of the receipt of the second writ of summons.

Normally when an amendment is allowed, the defendant/defendants are given time to file additional written statement. In the instant case the defendant was

required to file the written statement pursuant to receipt of the first writ of summons within the time frame provided there under. The defendant no. 1 upon the amendment being allowed had the right to file additional written statement even if the unamended copy of the written statement was served along with the second writ of summons. There was no embargo on the defendant in filing the written statement within the time frame provided thereunder. The defendant did not do so. It is clear that the defendant no. 1 after detecting the fact that the amended copy of the plaint was not served on the said defendant has taken a chance to get an extension of time to file the written statement by contending that the time to file the written statement if any shall commence from 15th March, 2023. This contention of the defendant no. 1 could have been accepted for the purpose of filing additional written statement if the defendant no. 1 had filed the written statement either after receipt of the first writ of summons or upon receipt of the second writ of summons. The defendant no. 1 was served with the amended application on the amendments being allowed; the defendant no. 1 could have tallied the proposed amendment as shown in the amended application along with the original plaint and should have approached the Court pointing out the fault on the part of the plaintiffs. In that situation, the Court could have exercised its discretion to permit the defendant no. 1 to file additional written statement. Having not done so, it is too late in the day for the defendant no. 1 to contend that the time to file written statement should be computed from 15th March, 2023. The ratio laid in *SCG contracts (supra)* is very clear and specific. No

extension of time beyond 120 days can be allowed in case of a suit instituted in the Commercial Division of this Court as the defendant forfeits its right to file the written statement. The only exception noticed by this Court is in the judgment delivered by the Supreme Court and reported in **(2022) 5 SCC 112 *Prakash Corporates v. Dee Vee Projects Limited***. In that case, considering the Covid-19 restrictions the Supreme Court had extended the time to file the written statement beyond 120 days. It is an exceptional case based on the facts of such case before the Hon'ble Supreme Court. The ratio laid down in the said judgment has no application in the facts of the instant case in view of the discussion made herein. In the light of the discussion as aforesaid, the prayer for extension of time to file written statement by condoning is refused as the defendant has forfeited its right to file the written statement on expiry of 120 days from the date of receipt of the second writ of summons.

The application being GA 4 of 2023 is accordingly dismissed.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)