

SUPREME COURT OF INDIA

Sandeep Thapar

Vs.

Sme Technologies Private Limited

C.A.No.65 of 2014

(Surinder Singh Nijjar and Fakkir Mohamed Ibrahim Kalifulla JJ.)

02.01.2014

ORDER

1. Leave granted.

2. This appeal has been filed impugning the judgment and order dated 12th November, 2010 in FAO(OS) NO.607 of 2010, whereby the Division Bench of the Delhi High Court dismissed the appeal filed by the appellant in I.A. NO.13902 of 2008 filed under Order VIII rule 1 praying for extension of time for filing written statement by the defendant i.e. the appellant herein till I.A. No. 11803 of 2008 filed under Order I rule 10 to implead Mr. Sharad Maheshwari as plaintiff. The aforesaid Mr. Sharad Maheshwari is the Managing Director of the plaintiff Company who is privy to the entire cause of action of the suit filed for recovery of Rs.39.90 lakhs based on alleged oral agreement/understanding. The applications filed by the appellant were dismissed by the learned Single Judge of the High Court on 3rd August, 2010.

3. The aforesaid order was challenged before the Division Bench. The Division Bench after hearing the counsel for the parties has observed that the learned single judge has correctly held that it is not necessary to implead Mr. Sharad Maheshwari as the plaintiff as the company being a legal entity is entitled to file a suit in its own name through an authorized representative. It is also observed that it is for the plaintiff to prove its case during the trial. Therefore, non impleadment of Mr. Sharad Maheshwari will have consequences only for the plaintiff and not for the appellant. The plea of the appellant that since Mr. Sharad Maheshwari had not filed his affidavit, despite the entire suit being based on an oral agreement alleged to

have been entered into between the appellant and Mr. Maheshwari, in case the appellant was to file his written statement that would disclose his defence, has been rejected by the Division Bench.

4. The High Court was of the opinion that even if Mr. Sharad Maheshwari is impleaded and had filed an affidavit, the averments in the plaint could not have been changed. In other words, the character of the plaint, the pleadings contained therein and the relief claimed would remain the same.

5. The application of the appellant for seeking extension in time for filing the written statement has been rejected with the observation that that Order VIII Rule 1 CPC is mandatory and the Court cannot permit filing of a written statement beyond the 30 days from the date of service of summons. At best, the Court has power to permit a period of further 60 days from the date of service of summons upon the defendant to file the written statement. But this has to be done for reasons to be recorded in writing. Since the appellant herein has filed the application beyond the period of 30 days + 60 days, it was not permissible for the Court to allow the appellant to file the written statement.

6. Learned counsel for the appellant has submitted that undoubtedly the limit under Order VIII rule 1 has to be observed, but in exceptional circumstances in order to ensure that the injustice is not done, the Court will have the power to permit the defendant to file the written statement.

7. We have considered the submission made by the learned counsel. In our opinion, the submission made by the learned counsel is well founded in view of the observations made by this Court in *Kailash versus Nanhku and others* reported in (2005) 4 SCC 480], wherein this Court has observed as follows:

46. We sum up and briefly state our conclusions as under:-

(i)

(ii)

(iii)

(iv) The purpose of providing the time schedule for filing the written statement under Order VIII, Rule 1 of CPC is to expedite and not to scuttle

the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII, Rule 1 of the CPC is not completely taken away.

(v) Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.”

8. We are satisfied that in the circumstances of this case, the High Court ought to have permitted the appellant to file written statement, beyond the period prescribed in Order VIII rule 1, given the facts and circumstances of this case.

9. In view of the above, the appeal is allowed. The appellant is permitted to file the written statement within a period of two weeks from today on payment of Rs.50,000/- (Rupees fifty thousand) as cost.