

COMMERCIAL COURT AT ASANSOL
(FOR THE DISTRICTS OF MURSHIDABAD, BIRBHUM, PURBA BARDHAMAN,
PASCHIM BARDHAMAN, PURULIA AND BANKURA)

Present : Sri Sourav Bhattacharya
Judge, Commercial Court at Asansol

JO Code : WB00854.

Money Suit No. : 19/2021

CNR No. : WBBD17-000036-2021

Plaintiff : M/s. TESCON and Anr.

V/s.

Defendant : Punjab National Bank and 2 Ors.

Order No – 12

Dated - 30/04/2022

This day is fixed for passing order in respect of petition for acceptance of WS and the application under Order XXXIX Rule 7 read with Section 151 of C. P. Code.

Plaintiffs have been represented by Ld. Advocates Sri Sagarmay Ghosh and Sri Shobhantanu Bhattacharyya.

The contesting defendant i.e. defendant No. – 02 was represented by the Ld. Advocate, Smt. Swapna Mondal and Sri Sudipto Ghatak.

Perused the case record. Heard both sides on the last occasion.

Record is now first taken up for passing order in respect of the petition of the defendant No. – 02 praying for acceptance of WS (I.A. No. – 07 of 2022, dated 25/03/2022).

In the case at hand, it is seen from the affidavit of service that summon was served upon the defendant No. – 02 on 13/08/2021.

Contd/...(P/2)

The defendant No. – 02 entered appearance on 07/10/2021.

Written statement was filed on 25/11/2021 followed by Statement of Truth on 07/01/2022.

The petition was contested by the plaintiff by filing written objection contending *inter alia* that the written statement has been filed beyond the statutory period for which it cannot be taken on record.

The plaintiff has relied on the following decisions :-

- I. **AIR 2005 SC 2441** (Kailash V/s. Nanhku & Ors.) – where the Hon’ble Supreme Court held that the extension of time however to be granted only for exceptional circumstances,
- II. **AIR 2019 SC 2691** (M/s. SCG Contracts India Pvt. Ltd. V/s. K. S. Chamankar Infrastructure Pvt. Ltd. & Ors.) – where the Hon’ble Supreme Court held that what is of grade importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

Considered the contention and rival contention having regard to the materials on record in the light of the aforesaid decisions although on facts, these decisions do not resemble with the facts of the instant suit.

It is the admitted position that the written statement was not filed within a period of 30 days from the date of service of summon but the same has been filed within a period of 120 days.

The Statement of Truth which is a procedural formality has been filed at a later stage.

The Hon’ble Supreme Court in Miscellaneous Application No. –

665 of 2021 in SMW(C) No. – 03 of 2020 in reference to cognizance for extension of limitation has been pleased to exclude the period from 15/03/2020 till 02/10/2021 in computing the period of limitation for any suit, appeal, application or proceeding.

That being the position, I have no hesitation to conclude that there is no legal bar in the given facts to accept the written statement.

Accordingly, the petition for acceptance of WS filed by the defendant No. – 02 being I.A. No. – 07 of 2022, dated 25/03/2022 is allowed subject to payment of costs.

The written statement of the defendant No. – 02 be taken on record subject to payment of costs of Rs. 5,000/- to be paid by the defendant No. – 02 before the Secretary, DLSA, Paschim Bardhaman before next date.

The Secretary, DLSA, Paschim Bardhaman be informed accordingly by email.

Now the record is taken up for passing order in respect of the application of the plaintiff under Order XXXIX Rule 7 of C. P. Code (I.A. No. – 06 of 2022, dated 18/02/2022) praying for direction to hold a local inspection of the Schedule – A properties (Schedule assets) by appointing Advocate Commission as per the points of inspection stated in the instant application.

Heard both sides on the last occasions.

The application was contested by the defendant / opposite party No. – 02 by filing written objection thereto.

Perused the subject application, written objection and the

materials on record.

The facts that led to the filing of this application relevant for the present purpose are narrated below in the following manner :-

- 1) The plaintiff / petitioner No. – 01 is a partnership firm. The partners of this firm opened a cash credit account for the purpose of running the business being A/C No – 0464210031514 with the defendant / opposite party No. – 02.
- 2) Furthermore, for the purpose of execution of different contracts, the plaintiff / petitioners approached the defendant / opposite party No. – 02 to sanction and disburse Term loans for the purpose of procurement of different machineries and / or equipments. The said bank directly made payment to the selling dealers of respective machineries / equipments through the said cash credit account.
- 3) Dispute cropped up between the parties for imposing earning interest on the enhanced credit and as such allegedly even after continuing the payment from 10/03/2022 till date, the liabilities towards repayments of the loans on hypothecated vehicles / machineries have not yet been completed.
- 4) It is stated that the cash credit account should not be debited for purchasing of fixed asset but the defendant / opposite party No. – 02 did so and the fixed assets as mentioned in Schedule – A of the plaint as well as the subject application have already been charged by hypothecation to the defendant / opposite party No. – 02

Contd/...(P/5)

and all documents including blue books and duplicate keys were kept with the bank but the Term loan has not yet been sanctioned and / or disbursed till date. All those assets were kept idle as the same were unable to ply and / or put into use in the business activities and as a consequence thereof those assets turn into almost scrap.

Prayer has been made to hold local inspection of the Schedule – A assets in terms of the points of inspection.

The defendant / opposite party No. – 02 has contended *inter alia* in its written objection that the property mentioned in the said schedule are not within the custody of the plaintiffs / petitioners since those articles belong to the opposite party No. – 02 (Bank) having regard to the fact that those vehicles have been hypothecated to the bank upon failure of the plaintiffs / petitioners to clear the loan amount within the statutory time frame.

This is a suit for recovery of money along with a decree for damages which has arisen out of the alleged transaction of loan to the plaintiffs / petitioners by the defendant / opposite party No. – 02 through the said cash credit account and followed by hypothecation of purchased machineries / equipments upon the alleged failure to clear the loan amount.

Order XXXIX Rule 7 of C. P. Code empowers the Court to make an order for detention, preservation and inspection of the property which is the subject matter of the suit or as to which any question arises therein. At paragraph No. – 33 of the subject application, the petitioners / plaintiffs mentioned in the points of

inspection primarily to prepare inventory and to note the present physical condition of the schedule assets. This is a Money Suit and the merits of the respective allegations can only be adjudicated after evidence is led. The purpose of application under Order XXXIX Rule 7 in the given facts has no legal foundation. I do not find any grounds to justify this application since this application has been apparently filed to fish out evidence.

The facts relevant to prove the respective claims have to be brought on record through evidence which cannot be substituted by permitting Advocate Commissioner to inspect the spot for collecting evidence inasmuch as allowing appointing a Commissioner on this premise would amount to rendering assistance to the plaintiffs / petitioners to collect evidence.

In view of the aforesaid reasons, this application appears to be not coming within the purview of Order XXXIX Rule 7 for collecting evidence in the garb of local inspection.

Hence, the instant application on the Order XXXIX Rule 7 of C. P. Code filed by the plaintiffs / petitioners being I.A. No. – 06 of 2022, dated 18/02/2022 stands rejected on contest without costs.

Fix 01/06/2022 for consideration to explore the possibility of ADR mechanism.

D/C by me.

Judge, Commercial Court
Asansol

Judge, Commercial Court
Asansol