

Present: Smt Suparna Ray (JO Code:WB00711)
Judge, Commercial Court at Alipore
Title Suit No. 06 of 2022
Renumbered as T.S. (Com) 33 of 2022
CNR No. WBSP18-000054-2022

Order No. 25

Date: 21.02.2025

In the matter of:

Suit for declaration, damages and injunction valued at Rs. 45,73,213/-.

AND

In the matter of:

Krishna Agrotech Ltd.

Vs.

Chakiat Agencies Pvt. Ltd. & Anr.

Order

Today is fixed for passing order of the applications being I.A. no. 01 of 2022 and I.A. no. 02 of 2022 filed by the defendant no. 2 herein.

Plaintiff and defendant nos. 1 and 2 file their respective haziras.

Now, the matter is taken up for passing necessary order.

I.A. No. 01 of 2022 and I.A. No. 02 of 2022

Indeed, the instant suit was primordially filed by the plaintiff before the Ld. 2nd Civil Judge (Junior Division) at Alipore and the same was thereafter transferred before this Court on 26.04.2022 inasmuch as the Ld. Transferor Court transferred the same by the Order dated 15.03.2022 in respect of an application under Section 15 of the Commercial Courts Act, 2015 filed by the plaintiff therein.

After transferring the instant suit, the Ld. Transferor Court by an Order dated 17.12.2019 fixed the instant suit for *ex parte* against the defendant no. 2, the petitioner of the captioned applications herein, citing that the mere filing of a petition under Order VII Rule 11 of the Code of Civil Procedure, 1908 does not and cannot be a ground for extending the time for filing the written statement. Further in the Order dated 10.02.2021 the said Ld. Court while hearing a petition under Order XI Rule 21 of the CPC filed the defendant no. 2, reiterated that inasmuch as the suit has already been proceeded *ex parte* against the defendant no. 2, therefore, the said defendant being the defendant no. 2 has no *locus standi* to file any application unless the *ex parte* proceeding order against him be set aside and as such rejected the said application. From the revelation of the instant record, it finds that the defendant challenged the Order dated 17.12.2019 before the Hon'ble High Court at Calcutta and the Hon'ble Court by an Order dated 06.02.2020 dismissed the said application. Thereafter, by way of put up on 28.02.2020 the defendant no. 2 filed the written statement without filing any application for accepting the same.

After the chequered elevation as stated above, the defendant no. 2 filed captioned applications being I.A. No. 01 of 2020 for condonation of delay in filing Written Statement and acceptance of the same and another being I.A. No. 02 of

2020 praying for recalling and/or modification of the Orders dated 17.12.2019 and 10.02.2021.

The contention of the defendant no. 2 is that in the instant case, the petitioner has been proactive in the suit and there has been no lackadaisical attitude displayed by the petitioner as evidenced by the facts. On 16th May, 2017, during the pendency of the application filed by the petitioner under Order VII Rule 11, the petitioner filed another application under Order XII Rule 6. On 11th June, 2018, the Ld. Court dismissed the application under Order VII Rule 11, but the point on Order XII Rule 6 was not considered. Revisional application was filed by the petitioner in July 2018 to urge the Court to adjudicate on the matter not dealt with. The Court was pleased to pass an order on 5th November, 2019 stating that Order XII Rule 6 application be disposed of expeditiously. Subsequently, on 17th December, 2019 the Ld. Court dismissed the Order XII Rule 6 application and on account of the W/S not being filed by the petitioner even after appearing in the suit on 7th March, 2017, the Court held that the matter be moved ex parte against the petitioner.

Ld. Counsel for the defendant no. 2 has submitted before this Court that at this point it is important to note that the said defendant wrongfully followed the advice of its erstwhile Ld. Advocate, that the W/S would not be required to be filed until the application under Order VII Rule 11 was adjudicated. Following the dismissal of the application under Order VII Rule 11, the defendant has instructed its erstwhile Ld. Advocate to immediately draft and file the W/S. Said defendant then filed a revisional application before the Hon'ble High Court challenging the Order dated 17th December, 2019 and the Hon'ble Court dismissed the said C.O., however, liberty was extended to the defendant no. 2 to make appropriate application for filing Written Statement before this Court and as such said defendant filed its written statement on 28.02.2020.

Ld. Counsel has further submitted that the defendant no. 2 was proactive during the whole duration of the case and has also complied with all the directions of this Court in this instant suit. Besides that, Ld. Counsel has relied on the decision of the Hon'ble Gujarat High Court in the case of Nimesh Dilipbhai Brahmhatt vs. Hitesh Jayantilal Patel wherein the Hon'ble Court condoned a delay of 3330 days in filing the W/S caused by the fault of the advocate. He has further relied on the decision of the Hon'ble Bombay High Court in the case of Reliance General Insurance Company Ltd. vs. Colonial Life Insurance Company and Ors. and submitted that in the said case, the Hon'ble Court held that the mandatory timeline of 120 days for filing a written statement in a commercial suit is not applicable to suits which were filed prior to the enactment of the Commercial Courts Act, 2015 and subsequently "transferred" as commercial suit.

Besides the aforesaid, further contention of the Ld. Counsel for the defendant no. 2 is that Order 47 Rule 1 of the Code states that a review application to set aside an order may be permitted on three grounds, i.e. new material found, mistake or error, or any sufficient reason. As regards, Ld. Counsel has referred to a decision of the Hon'ble Apex Court in the case of BCCI vs. Netaji Cricket Club wherein, as submitted by the Ld. Counsel, the Hon'ble Court held that the words "sufficient reason" in Order 47 Rule 1 of the Code is wide enough to include a misconception

of fact or law by a court or even an advocate. In the instant case the reason as shown by the defendant no. 2 is sufficient to recall the Orders dated 17.12.2019 and 10.02.2021.

Per contra, the plaintiff's contention is that the defendant no. 2 has not filed its statement to traverse the claim of the plaintiff but have filed several petitions so that the defendant no. 2 may get rid of the trial. Finding the dubious conduct of the defendant no. 2 it was further held by the Court that the defendant no. 2 appeared in the suit on 07.03.2017 and till 17.12.2019 did not file its W/S and since the statutory time had already elapsed, the Court has no option but to fix the suit for *ex parte* hearing against the defendant no. 2 on the ground that merely filing of Order VII Rule 11 application of CPC does not and cannot extend the time for filing W/S and again fixed on 12.02.2020 for framing of issues.

Ld. Counsel for the plaintiff has submitted that the application being I.A. No. 02 of 2022 is not maintainable in the eye of law, since the order impugned not being passed *ex parte* as against the defendant no. 2 and therefore, cannot be recalled. Consequently, the I.A. No. 01 of 2022 stands infructuous, since the W/S cannot be accepted as long as the order for *ex parte* proceeding against the defendant no. 2 sustains, in the facts of the present case.

Ld. Counsel for the plaintiff has then referred to the Section 15 of the Commercial Courts Act, 2015 and has submitted that the Section 12 deals with transfer of pending cases before any civil court in any district or area of which a Commercial Court has been constituted. Sub Section 3 further says that in matter of transferred cases provisions of this Act shall applicable to those procedures that were not complete at the time of transfer. In other words, the opportunity closed by the Ld. 2nd Civil Judge (Sr. Divn.) by passing Order dated 17.12.2019 attained finality and since already been decided by the Ld. Transferor Court, cannot be reconsidered by setting the clock back at the instance of the defendant no. 2. The show cause petition enunciates no actual cause which can be sufficient enough to explain the delay of 769 days in filing those two applications. In support his submission, Ld. Counsel has referred to the Article 123 of the Limitation Act is the relevant provision which provides for 30 days period of limitation to recall an order from the date of knowledge. The Order is of 17.12.2019 and the purported recall application has been made on 24.01.2022 i.e. after elapsed of 769 days which clearly goes on to demonstrate that the defendant no. 2 has purposely neglected to act reasonably and attempted to drag the suit proceedings, which also transpires from the fact that the defendant no. 2 has filed and proceeded with its two frivolous, vexatious applications but failed to file its W/S. In respect of that Ld. Counsel has referred to cases reported in SCC Online SC 513 and 2010(8) SCC 685.

Heard the both sides and considered the material on record.

It is found to me that the Ld. Transferor Court had already curtailed the liberty of the defendant no. 2 to file written statement by its Order dated 17.12.2019 and the by the Order dated 06.02.2020 the Hon'ble Court had not interfered the said Order. Therefore, the Order dated 17.12.2019 sustains now. Furthermore, as per Sub-section 3 of Section 15 of the Commercial Courts Act, 2015 it is averred that provisions of this Act shall applicable to those procedures that were not

complete at the time of transfer. It is appropriate to state aforesaid provisions in *toto* “(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer”.

In the instant case the Ld. Transferor Court by an Order dated 17.12.2019 had already fixed the matter on *ex parte* board against the defendant no. 2 and the said was affirmed by the Hon’ble Court. Therefore, there is no ground to recall such order at this stage.

More so, this court at this context has relied on the decision of the Hon’ble Supreme Court of Indian in the case of SCG Contracts (India) Private Limited vs. K.S. Chamankar Infrastructure Private Limited and Ors. reported in (2019) 12 SCC 210 wherein the Hon’ble Apex Court stringently forfeited the right of the defendant to file the W/S beyond 120 days in a commercial suit and further held that mere filing of an application under Order VII Rule 11 of the Code for rejection of plaint could not be a ground to allow the defendant to file his W/S beyond the aforesaid 120 days. In the case in hand, the defendant no. 2 had taken the plea, for non-filing of the written statement within the stipulated period that the defendant no. 2 had filed an application under Order VII Rule 11, which plea as per the above decision of the Hon’ble Court, therefore, cannot be a ground for a long delay to file the W/S in the instant case.

The case being *Nimesh Dilipbhai (supra)* as cited by the Ld. Counsel for the defendant no. 2 is distinguishable in the facts and circumstances of the instant case and the case of *Reliance General Insurance Company Ltd (supra)* is also not applicable to the instant case as the plaintiff had filed the instant suit much after enactment of the Commercial Courts Act.

Therefore, in view of above stated premises, this Court does not find any reason to recall the Orders dated 17.12.2019 and 10.02.2021 upon consideration of the cause shown by the defendant no. 2 in the application being I.A. No. 01 of 2022. Accordingly, the application being I.A. No. 02 of 2022 is rejected on contest without any order as to costs and disposed of. In view of above, the application being I.A. No. 01 of 2022 for condonation of delay in filing W/S and acceptance of W/S hereby stands rejected on contest without any order as to costs and disposed of.

Fix the matter on 28th March, 2025 at 10:30 a.m. for further order and appearance of the parties.

Parties to act on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,

Sd/-
Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram

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Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram