

ODC-81 & 82

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
COMMERCIAL DIVISION

IA NO. GA/3/2022
In CS/94/2020

DUROPLY INDUSTRIES LIMITED AND ANR.
Vs
MA MANSA ENTERPRISES PRIVATE LIMITED

IA NO. GA/4/2022
In CS/94/2020

DUROPLY INDUSTRIES LIMITED AND ANR.
Vs
MA MANSA ENTERPRISES PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 17th January, 2023

Appearance:
Mr. Debnath Ghosh, Adv.
Mr. Sushovit Dutt Majumder, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Pubali Sinha Chowdhury, Adv.
Ms. Mini Agarwal, Adv.
...for the plaintiff

Ms. Sonal Shah, Adv.
Mr. K. Shah, Adv.
Mr. Sourajit Dasgupta, Adv.
...for the petitioner/defendant

The Court :

GA 4 of 2022

This is an application for extension of time to lodge the Writ of
Summons.

The suit is for infringement of trade mark and passing off. This suit was filed on 18th September, 2020. Thereafter, the plaint was presented and admitted on 24th September, 2020 subject to scrutiny by the Department. It is alleged that despite best efforts, the scrutiny of the plaint could not be completed within a reasonable time. Admittedly, the suit was filed during the period of the Covid-19 Pandemic. It is contended that most offices were working with limited staff during the pandemic. As such, the availability of the concerned persons in the Department for scrutiny of the plaint and for other procedural purposes was also limited. The plaintiffs also rely on the order dated 23rd March, 2020 passed by the Hon'ble Supreme Court extending the period of limitation during the period of Covid-19. It is alleged that after regular and proper functioning of the concerned Departments, the plaintiffs took steps for scrutiny of the plaint. The scrutiny was duly completed on 1 November 2022. Upon scrutiny there were some defects in the plaint. Such defects were removed on 12th December, 2022. Hence, the delay in lodging the Writ of Summons.

On behalf of the respondent, it is contended that there has been inordinate and unexplained delay on behalf of the plaintiffs. Moreover, the delay of a period of more than 2 years in taking steps to lodge the Writ of Summons defeats the

object of the Commercial Courts Act, 2015. Hence, the suit is liable to be dismissed.

In my view, a substantial portion of the delay in lodging the Writ of Summons was caused during the pandemic. Thus, the plaintiffs are entitled to the extended period of limitation in terms of the directions dated 23 March, 2020 passed by the Hon'ble Supreme Court. Thereafter, there has been a delay of approximately 6 (six) months by the plaintiffs in lodging the Writ of Summons. The defects were ultimately removed on 12 December 2022. I find the reasons provided by the plaintiff to be satisfactory and cogent.

In view of the aforesaid, there shall be an order in terms of prayers (a) to (c) of the Master's Summons. This order of extension is subject to payment of costs of Rs. 50,000/- by the plaintiff to the defendant.

With the aforesaid directions, GA/4/2022 stands disposed of.

GA 3 of 2022

This is an application for dismissal of the suit on the ground that the plaintiff has taken no steps in lodging the Writ of Summons.

In view of the order passed in GA/4/2022, condoning the delay in lodging the Writ of Summons, there is no scope of passing any order in this application.

Accordingly, GA 3 of 2022 stands dismissed.

(RAVI KRISHAN KAPUR, J.)

S.Bag