

OD-15

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

CS/549/1999

IA NO: GA/1/1999(Old No:GA/4229/1999)

GA/2/2000(Old No:GA/122/2000), GA/3/2000(Old No:GA/836/2000),
GA/4/2017(Old No:GA/693/2017), GA/6/2017(Old No:GA/2427/2017)

PIC DEPARTMENTALS PRIVATE LIMITED
VS
SREE LEATHERS PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SUGATO MAJUMDAR

Date: 12th June, 2023

Appearance:

Ms. Suparna Mukherjee, Adv.

Mr. Arup Nath Bhattacharyya, Adv.

Mr. Sarbajit Mukherjee, Adv.

Ms. Sayoni Das, Adv.

Ms. Saolini. Bose, Adv.

Mr. Snehasish Dey, Adv.

.....For the Plaintiff

Mr. Abhrajit Mitra, Sr. Adv.,

Mr. Sumanta Biswas, Adv.,

Mr. Bikash Shah, Adv.

.....For the Defendant

The Court: GA No. 4 of 2017 is filed by the Defendant praying for condonation of delay as well as for leave to file written statement. Leave is also prayed for to extend time by a period of eight weeks from the date of order so that written statement can be filed in the instant suit.

The nutshell of the case of the Defendant is that the instant suit was filed by the Plaintiff against the Defendant on 30th September, 1999. The Defendant duly made appearance in the suit on 3rd December, 2000 through the Learned Counsel Sri Ajay Sankar Sanyal. The Defendant duly contested various interlocutory applications in the suit filed by the Plaintiff. The Defendant had to face and contest the contempt proceedings also, for which “*unfortunately and inadvertently*” written statement could not file. In fact, as averred, entire attention of the Defendant was confined to the matters in issue in the interlocutory applications and subsequent contempt proceedings. In the mean time the previous advocate of the Petitioner/Defendant informed that suit was disposed of on 01/03/2000. Subsequently, the Defendant through his agent and/or authorized person obtained status report from the official website of this Court. Defendant came to know that the suit was disposed of on 01/03/2000. Therefore, the Defendant felt no urge to take further steps in this suit. Gradually, the Defendant lost all their contacts with the previous Advocate-on- record.

Suddenly on 7th January 2017 the suit came up for hearing before this Court. The present advocate of the Petitioner obtained status report from this Court and informed the Defendant that suit was disposed of in the year 2000. Subsequently, a Bench of this Court called for a report from the Registry. Subsequently, on 13th January 2017 matter appeared in the combined monthly list of February 2017. Subsequently, several companies amalgamated into M/s. Sreeleathers Limited the scheme was sanctioned 2nd December, 2008. It is averred that ‘admittedly committed default in

compliance'. In the backdrop, the instant application is filed praying for leave in the written statement.

Mr. Mitra, Learned Counsel appearing for the Defendant submitted that latches cannot be wholly attributable to the Defendant. In view of the information received from this Court the Defendant had bona fide and reason to believe that suit was disposed in the year 2000 for which written statement could not be filed. It is further submitted by Mr. Mitra that time frame, to file written statement provided in the Code of Civil Procedure is only directory. Therefore, leave may be granted to file written statement. Mr. Mitra refers to ***Raj Process Equipments and Systems Pvt. Ltd. and Ors. vs. Honest Derivatives Pvt. Ltd. (MANU/SCOR/108561/2022); Desh Raj vs. Balkishan (D) through Proposed L.R. (MANU/SC/0055/2020); Sayan Sarker vs. Austin Distribution Private Limited (MANU/WB/0422/2021); Rima Sen vs. Subhajit Sen (MANU/WB/0004/2021); Sambhaji and Ors. vs. Ganabai and Ors. (2008) 17 SCC OnLine 117.***

Per contra, Ms. Mukherjee appearing for the Plaintiff vehemently objected to the contentions. Relying on a report obtained from the Registry she submitted that the Defendant actually appeared in the suit on 3rd day of February 2000 through Mr. Ajay Sankar Sanyal, Advocate. It is misguiding statement on behalf of the Defendant that they made appearance on 3rd December, 2000. It is further submitted on behalf of the Plaintiff that the Defendant was very much conscious of pendency of the proceedings as they admitted that they were contesting various interlocutory applications from

the beginning. There is no justified reason to allow the Defendant to file written statement after lapse of twenty three years. According to Ms. Mukherjee the application should be dismissed and the suit should be fixed for hearing undefended.

I have heard rival submissions.

The suit was filed in the month of September 1999. From the report of the department it appears that one copy of the writ of summons with plaint was served by personal service on Kali Prasad Manna for the Defendant by an officer of this Court on 28/01/2000. Thereafter, one copy of writ of summons with plaint was despatched on 18/02/2000. Postal acknowledgement was received by the Office of the Deputy Sheriff of Kolkata on 01/03/2000. Report of the Suit Registry Department of OS dated 20/02/2023 shows that the Defendant entered appearance on 3rd day of February 2000. The Defendant admitted that they made their appearance in December 2000. Admittedly, they contested various applications. Therefore, knowledge of pendency of this suit can be attributable to them. Yet they did not file any written statement. It is also admitted in the Petition that *“unfortunately and inadvertently”* the Defendant *“could not file written statement.”* This also admitted by the Defendant that they have committed default in compliance. Even though the Defendant took the plea that from High Court itself they were informed that the suit was disposed of on 01/03/2000 their pleas itself that they made appearance on 3rd December, 2000 and contested interlocutory applications contradict such pleas. There is no explanation why they did not file written statement for such a long

time. The decision referred to it does not help the Petitioner to overcome the situation. None of the decisions favours filing a written statement after lapse of twenty three years. In ***Desh Raj vs. Balkishan (D) through Proposed L.R. (2000) 2 SCC 708*** the Supreme Court of India took a lenient view in allowing delay of ninety five days in filing a written statement. However the observations made by the Apex Court of India are very important and relevant:

“15. However, it would be gainsaid that although the unamended Order 8 Rule 1 CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweet will and/or to prolong the lis. The legislative objective behind prescription of timelines under CPC must be given due weightage so that the disputes are resolved in a time-bound manner. Inherent discretion of courts, like the ability to condone delays under Order 8 Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay.”

The case in hand is not one where there is no justifiable delay. It is delay of twenty three years; it is in the Petition itself that written statement

could not be filed “*unfortunately and inadvertently.*” There is no plausible cause or justifiable reason as to why written statement was not filed.

Therefore, I am neither inclined to allow the instant application nor to allow the Defendant to file written statement. Accordingly, the instant application stands dismissed. The suit will be heard undefended.

Let the suit appear in the list on 5th July, 2023 as undefended suit.

(SUGATO MAJUMDAR, J.)