

MANU/DE/1306/2008

Equivalent Citation: 152(2008)DLT577, 2008(38)PTC204(Del)

IN THE HIGH COURT OF DELHI

CS(OS) No. 594/2007

Decided On: 03.09.2008

Appellants: **Glaverbel S.A**
Vs.

Respondent: **Dave Rose and Ors.**

Hon'ble Judges/Coram:

Hima Kohli, J.

Counsels:

For Appellant/Petitioner/plaintiff: S.C.Aggarwal, Sr. Adv., Hemant Singh and Mamta Rani, Advs

For Respondents/Defendant: Prathiba M. Singh, Adv.

Subject: Civil

Acts/Rules/Orders:

Code of Civil Procedure (CPC) - Order 8 Rule 10, Code of Civil Procedure (CPC) - Order 39 Rule 1, Code of Civil Procedure (CPC) - Order 39 Rule 2

Cases Referred:

Smt. Rani Kusum v. Smt. Kanchan Devi and Ors. AIR 2005 SC 3304; Kailash v. Nankhu and Ors. AIR 2005 SC 2441

Citing Reference:

Discussed 2

Case Note:

Limitation - Condonation of Delay - Present application filed for condonation of delay in filing of written statement to counter claim of defendant - Held, delay in filing written statement is for a period of almost six months from date plaintiff was directed to file written statement and approximately four months from date of expiry of 90 days - Relief sought by plaintiff in suit against defendants is for its claim of infringement of registered patent granted in favour of plaintiff and for damages - Claim of defendants in its counter claim is for cancellation of patent of plaintiff - Issues in both suits are completely interlinked - Any relief granted to defendants in their counter claim without giving an opportunity to plaintiff to place its defence on record, would automatically result in defeating suit instituted by plaintiff, without putting it to trial - This fact itself ought to be given sufficient weightage while considering request of plaintiff for seeking condonation of delay in filing its written statement to counter claim - Matter is still under consideration - Therefore it cannot be said that inconvenience caused to defendants is sufficient to non-suit plaintiff in counter claim - Hence, application allowed

JUDGMENT

Hima Kohli, J.

IA No. 240/2008 in C.C. No. /2008 (to be numbered) (by plaintiff for condonation of delay in filing the written statement to the counter claim of the defendants/counter claimants)

1. Pursuant to the order dated 25.4.2008, the plaintiff has filed an affidavit dated 27.5.2008 in support of the present application by which condonation of delay is sought for delayed filing of the written statement to the counter claim of the defendant. The defendant has also filed its response thereto.

2. It is stated in the said affidavit that while the plaintiff may have been aware of the cited references and various documents relied upon by the defendants in their written statement-cum-counter claim, however, the same does not constitute relevant prior art documents. It is further stated in the affidavit that the said documents were never considered or examined as prior art documents by the plaintiff as on the date of institution of the suit and that only when the said documents were relied upon by the defendants, the plaintiff

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got an opportunity to scrutinize and analyse them, so as to deal with the contentions raised by the defendants.

3. It is stated by the counsel for the plaintiff that in view of the aforesaid position, the written statement to the counter claim came to be filed only on 2.1.2008, i.e. after a period of almost six months from 10.7.2007, the date when the plaintiff was directed to file the written statement to the counter claim of the defendants. It is further submitted on behalf of the plaintiff that the clients of the plaintiff are based in Belgium. The documents which were to be examined and analyzed needed a lot of communication, interactions and discussions amongst the plaintiff and its attorneys located in different countries. It is thus stated that the delay in filing the written statement on the part of the plaintiff is bonafide and the plaintiff would not stand to gain by seeking to drag its own suit as its interim application is still under consideration and the plaintiff does not enjoy any ex-parte stay thereon till date.

4. In support of his submission that discretion is vested in this Court to condone the delay in filing the written statement, counsel for the plaintiff seeks to rely on the judgment rendered by the Supreme Court in the case of Smt. Rani Kusum v. Smt. Kanchan Devi and Ors., MANU/SC/0489/2005 : AIR2005SC3304 .

5. On the other hand, counsel for the defendants submits that she has filed a response to the affidavit filed on behalf of the plaintiff wherein they have stated that prior art documents referred to by the defendants in the written statement were in fact well within the knowledge of the plaintiff. She submits that the said fact is borne out by submissions made in para `F' of her reply affidavit wherein it is submitted that the plaintiff has filed several Information Disclosure Statements during the prosecution of its patent application in the USA and it had dealt with the prior art documents filed by the defendants. She submits that all the relevant documents are enclosed with the reply affidavit.

6. Counsel for the defendants further states that considering the long delay on the part of the plaintiff in filing the written statement, the defendants are entitled to a decree in their favour. In this regard, she submits that the defendants have filed an application under Order 8 Rule 10 CPC, being IA No. 11961/2007, which came to be filed by the defendants as long back as on 10.10.2007. She submits that even after the filing of the aforesaid application, the plaintiff chose to file its written statement only on 2.1.2008. She thus urges the Court to pronounce judgment against the plaintiff in the counter claim filed by the defendants, by invoking the provisions of Order 8 Rule 10 CPC. In support of her submission that delay ought to be condoned only in extraordinary circumstances and not in ordinary course, she relies on the judgment of the Supreme Court in Kailash v. Nankhu and Ors. MANU/SC/0264/2005 : AIR2005SC2441 .

7. I have heard counsels for the parties. The records reflect that the suit was instituted by the plaintiff on 22.3.2007. The same was registered and notice was issued to the defendants on 30.3.2008. The written statement and counter claim came to be filed by the defendants on 4.7.2007. Vide order dated 10.7.2007, the plaintiff was directed to file its written statement to the counter claim as also replication to the written statement filed by the defendants. As no steps were taken by the plaintiff, the defendants filed an application under Order 8 Rule 10 CPC being IA No. 11961/2007, on which notice was issued vide order dated 12.10.2007. Finally, the plaintiff filed the present application on 2.1.2008, praying inter alia for condonation of delay in filing the written statement to the counter claim of the defendant.

8. It is the admitted case of the parties that the delay in filing the written statement is for a period of almost six months from the date the plaintiff was directed to file the written statement, and approximately four months from the date of expiry of 90 days. Having regard to the fact that the relief sought by the plaintiff in the present suit against the defendants is for its claim of infringement of the registered patent granted in favour of the plaintiff and for damages, whereas the claim of the defendants in its counter claim is for cancellation of the patent of the plaintiff, it cannot be denied that the issues in both the suits are completely interlinked. Any relief granted to the defendants/ counter claimants in their counter claim without giving an opportunity to the plaintiff to place its defence on the record, would automatically result in defeating the suit instituted by the plaintiff, without putting it to trial. This fact itself ought to be given sufficient weightage while considering the request of the plaintiff for seeking condonation of delay in filing its written statement to the counter claim.

9. It is not a run of the mill case of a nature where a suit is filed by one party against other, and in the absence of the written statement, or in the case of extraordinary delay by the defendant, the automatic consequence is one of granting a decree in favour of the plaintiff. In any case, in a matter of such a nature where infringement of patent is claimed by the plaintiff and denied by the defendants and the defendants take a step further and seek cancellation/revocation of the patent which is the basis of the plaint instituted by the plaintiff, it is all the more incumbent that the matter is put to trial and decided on merits rather than permitting the defendant to steal a march over the plaintiff, merely on technicalities. It should be the endeavour of the Court to view matters of such a nature through the equitable prism of fair play and natural justice rather than adopt a rigid posture resulting in road rolling the bonafide defence of the parties, under the garb of strict compliance of the provisions of law. In this regard, this Court draws strength from the observations made in the case of Rani Kusum (supra) wherein the Supreme Court emphasized the fact that ordinarily, the courts should not interpret procedural law to be mandatory in nature as procedural law shall remain subservient to and is in aid to justice.

10. In the present case, it is pertinent to note that the plaintiff would not seek to gain in any way by delaying its

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suit, particularly, since there is no exparte stay operating in its favour. Instead, the matter is still under consideration. Hence, it cannot be said that mere inconvenience caused to the defendants is sufficient to non-suit the plaintiff in the counter claim. However, while observing so, the fact can also not be lost sight of that the plaintiff has taken an undoubtedly long time in filing its written statement to the counter claim filed by the defendants, thus delaying the proceedings, which for all practical purposes, is an independent suit under the provisions of Order 8 Rule 6A CPC and ought to be tried in its own right.

11. In these circumstances, equities ought to be balanced while allowing the application of the plaintiff by subjecting the plaintiff to costs. As a result, the application of the plaintiff for seeking condonation of delay in filing the written statement to the counter claim of the defendants is allowed. Subject to the plaintiff paying a sum of Rs. 30,000/- as costs to the defendants within four weeks from today, the written statement filed to the counter claim of the defendants is taken on record.

The application is disposed of.

IA No. 11961/2007 (by defendant under Order 8 Rule 10 CPC)

In view of the order passed in IA No. 240/2008, condoning the delay on the part of the plaintiff in filing the written statement to the counter claim of the defendants, the prayer made in the present application is declined. The application is disposed of.

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Counsels for the parties state that pleadings are complete, but the original documents are yet to be filed. The parties are directed to file their original documents within four weeks. Both the parties shall exchange the index of documents in advance and endorse the admission/ denial of documents in a separate column on the index. After the admission/denial is conducted before the Joint Registrar, the exhibited documents shall also be endorsed on the list of documents of both the parties.

List before the Joint Registrar on 19.11.2008, for admission/ denial of documents.

List on 19.1.2009, for framing of issues.

CC No. /2008

The Registry is directed to register the counter claim and assign a number to it.

Counsel for the claimants/ defendants seeks time to file replication to the written statement filed by the plaintiff. Replication be filed within four weeks, with an advance copy to the other side. The parties are directed to file the original documents within four weeks. Both the parties shall exchange the index of documents in advance and endorse the admission/ denial of documents in a separate column on the index. After the admission/denial is conducted before the Joint Registrar, the exhibited documents shall also be endorsed on the list of documents of both the parties.

List before the Joint Registrar on 19.11.2008, for admission/ denial of documents.

List on 19.1.2009, for framing of issues.

IA No. 3756/2007 (Under/Order 39 Rules 1 & 2 CPC)

List on 19.1.2009.