MANU/DE/3874/2010

Equivalent/Neutral Citation: 2011(45)PTC66(Del)

IN THE HIGH COURT OF DELHI

CS (OS) 2532/2008

Decided On: 08.11.2010

Evoke Building Concepts Pvt. Ltd. **Vs.** Hindware Home Retail Pvt. Ltd.

Hon'ble Judges/Coram:
S. Ravindra Bhat, J.

Counsels:
For Appellant/Petitioner/plaintiff: Amarjit Singh and Dhruva Bhagat, Advs.

For Respondents/Defendant: Pravin Anand, Dhruv Anand and Achuthan Sreekumar, Advs.

Case Note:
Code of Civil Procedure 1908 Order 6 Rule 18 - Amendment of Counter-claim--Time permitted by the Court to file amended Counter-claim expired--Power to extend the period--Upper limit fixed in Section 148 cannot take away the inherent powers of the Court--Amended Counter-claim permitted to be taken on the record subject to costs.

ORDER

S. Ravindra Bhat, J.

1. The plaintiff seeks striking-off of all the Defendant's pleadings by inviting the Court to invoke its powers under Order 6 Rule 18 CPC.

2. The Defendant had sought for amendment of its Counter-claim, based upon an alleged trademark registration issued in its favor on 31.03.2008. The amendment application was moved on 15.12.2009; after hearing counsel for the parties, the Court granted the application by its order dated 07.04.2010. The plaintiff contends that the time permitted by the Court to file amended Counter- Claim expired on 21.04.2010, and yet the Defendant did not place the Counter- Claim and written statement on the record. It is argued that the Defendant did not also seek any extension of time within the said prescribed period. The plaintiff's counsel argues that the Defendant could have sought a further extension of 30 days which would have enabled it at best to file Counter-Claim/written statement by 20.05.2010. It chose not to do so and in these circumstances, argues the plaintiff, the Defendant/counter-claimant should be stricken-off the record.

3. In support of the contention that the Court does not possess any power to extend the period beyond 30 days under Section 148 of the CPC, the plaintiff relies upon the judgment of this Court in Glaxo Smithkline Consumer Healthcare v. Anchor Health and Beauty Care CS (OS) 1908/2002 dated 13.07.2009; reliance is also placed upon a ruling of the Supreme Court in Union of India v. Pramod Gupta (D) by L.Rs. and Ors. MANU/SC/0549/2005 : AIR 2005 SC 3708, which is to the following effect:

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146. It may be true that not only the memorandum of appeal but also the reference was amended. Mr. Rao pointed out that the necessary amendments have been carried out in the application for reference or memorandum of appeal. In terms of Order VI Rule 18 of the Code of Civil Procedure, such amendments are required to be carried out in the pleadings by a party who has obtained leave to amend his pleadings within the time granted therefore and if no time was specified then within fourteen days from the date of passing of the order. The consequence of failure to amend the pleadings within the period specified therein as laid down in Order VI, Rule 18 of the Code is that the party shall not be permitted to amend his pleadings thereafter unless the time is extended by the court. It is not in dispute that such an order extending the time specified in Order VI, Rule 18 has not been passed.

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4. It is argued that the Defendant has not even moved an application setting-forth any reasons why the delay ought to be condoned and in these circumstances, the Court should invoke its powers and exclude the amendments in the record.

5 . The Defendant argues that while undoubtedly there is no separate application seeking condonation of delay, reasons for not filing the amended counter-claim within the time have been set-out in the reply to the application, being I.A. No. 11928/2010 itself. The Defendant points-out to the relevant averments in the said reply at paras 6 to 8, which is to the following effect:

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6-8 That as regards the averments made by the Defendant in paragraphs 6, 7 and 8, the Counter Claimant most humbly submits that the delay in filing the amended Counter Claim was due to pure inadvertence and unintentional. That such delay would not prejudice the Defendant in any manner whatsoever. The Counter Claimant most humbly submits that the provisions of Order 6 Rule 18, Code of Civil Procedure are not mandatory in nature and the delay in filing the amended Counter Claim can be condoned by this Hon'ble Court either under Section 148, Code of Civil Procedure or by exercising its inherent powers under Section 151 CPC. That the plaintiff most humbly submits that the pleading of the registrations go to the heart of the infringement claim and are necessary to bring out the real questions in controversy between the parties.

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6. The Defendant argues that the Court always possesses inherent powers to extend the time granted by it for the performance of any function, by either of the parties. In this regard, reliance is placed upon the decision in Salem Advocate Bar Association, Tamil Nadu v. Union of India MANU/SC/0450/2005 : AIR 2005 SC 3353, particularly para 45, which is to the following effect:

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45. The amendment made in Section 148 affects the power of the Court to enlarge time that may have been fixed or granted by the Court for the doing of any act prescribed or allowed by the Code. The amendment provides that the

> period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the Court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the Court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of Court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to fully operate. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 clays for the reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the Limitation Act which cannot be extended either under Section 148 or Section 151.
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> We are dealing with a case where the time is fixed or granted by the Court for performance of an act prescribed or allowed by the Court.
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7. Learned Counsel for the Defendant argues that the ruling in Pramod Gupta (D) by L.Rs. and Ors. (supra) is not appropriate since the Court had no occasion to deal with Section 148. Similarly, the Defendant argues that the decision in Glaxo Smithkline Consumer Healthcare (supra) is not relevant since the Court had rejected the reasons given by the plaintiff regarding the delay.

8. The Court has carefully considered the submissions; the decisions in Pramod Gupta (D) by L.Rs. and Ors. (supra) undoubtedly suggests that the Court is bound by the period prescribed in Order 6 Rule 18 and that in the event of a party defaulting in placing the amended pleadings on the record, the amendments ought to be rejected. Further, at the same time, this Court notices that Salem Advocate Bar Association, Tamil Nadu (supra) case is by a larger Bench of three Judges. That appears to have been pronounced on 02.08.2005, in close proximity with the ruling in Pramod Gupta (D) by L.Rs. and Ors. (supra), which was rendered on 07.09.2005. In Salem Advocate Bar Association, Tamil Nadu (supra), the Court was directly concerned with the power of the Court under Section 148 Code of Civil Procedure and as the extracted portion appears to indicate, unless the period of limitation is prescribed by the legislature itself, such as in the case of statutory enactment like the Limitation Act, the Court has been held to possess powers under Section 148, to extend the period for the purpose of one or the other obligation spelt-out by it in the course of proceeding. So far as the order in Glaxo Smithkline Consumer Healthcare (supra) is concerned, this Court is inclined to accept the argument of the Defendant that the explanation for the delay was rejected in the order.

9. Now, coming to the facts of this case, the Counter-Claimant states that the delay in filing amended Counter-Claim was due to inadvertence and that the prescribed time elapsed between the two dates fixed by the Court. As explanation goes, facially, does not as happy one. However, this Court cannot also be blind to the circumstance that the Counter-Claim is premised upon an important aspect, which is also integral part of the defence in the case. Thus, having regard to the totality of the circumstances, eventhough the Defendant has not filed a separate application for condoning the delay, the Court is inclined to exercise power under Section 148, on the strength of the ruling in Salem Advocate Bar Association, Tamil Nadu (supra).

10. In view of the above discussion, the amended Counter-Claim is hereby permitted to be taken on the record, subject to the Defendant paying to the plaintiff Rs. 20,000/-as costs within four weeks. I.A. No. 11928/2010 is disposed of in the above terms.

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The plaintiff shall file written statement to the Counter-Claim within four weeks. The parties are directed to complete pleadings - the written statement to the amended Counter-Claim shall be filed within four weeks; replication shall be filed four weeks thereafter. It is agreed by the parties that no additional issue or further documents are required in the suit and the Counter-Claim. Learned Counsel also states that to expedite the trial, a Local Commissioner may be appointed. Accordingly, Sh. J.P. Sharma, Ex-DHJS (011-25505036, 25541281) is appointed as Local Commissioner to record the evidence of the parties, for which the parties shall get in touch with the Commissioner. The fee of the Commissioner is tentatively fixed at Rs. 1,25,000/-, to be borne in equal shares by the plaintiff and the counter- claimant/Defendant.