

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Date of Reserve: February 21, 2008

Date of Judgment: March 20, 2008

IA Nos.579/08, 845/08 and 844/08 in CS(OS) No.927/2007

S. Randhir Singh Chandhok ..

Through: .Plaintiff
Mr. Valmiki Mehta, Sr. Adv. With
Mr. J.S. Lamba and Mr.
Amit Bhagat, Advocates.

Versus

Atma Ram Bansal and Ors. ...

Through: Defendants
Mr. Ashutosh Lohia, Advocate

SHIV NARAYAN DHINGRA J.

IA Nos.845/2008

1. By this application under Section 151 CPC read with Section 149 and under Order 8 Rule 1 CPC, plaintiff sought condonation of delay in filing written statement. It is submitted by the plaintiff that on 9th January 2008 counsel for the defendants received an application filed by the plaintiff under Order 8 Rule 10 alleging therein that there was no written statement filed on record. After receipt of this application, counsel for defendant conducted inquiries and inspected the record. It is submitted that apparently the erstwhile clerk of counsel for the defendants, Mr. Vikas Chand, who had joined office a few months back erroneously filed the original set of signed written statement and the accompanied application as the office copy on the file of counsel unsigned and unattested copies were filed on Court record. Manifestly, the said clerk later on obtained objections on the said copy of written statement and without informing anybody in the office surreptitiously placed the same on the file of the counsel to escape reprimand. The said lapse of the clerk surfaced recently after receipt of the application of the plaintiff under Order 8 Rule 10. It is stated that there was a delay of 25 days in filing the written statement. The condonation of this delay is sought under Order 8 Rule 1 read with Section 149. It is stated that this delay was on account of the fact that counsel for defendants fell seriously ill during last three months on account of typhoid. The delay was unintentional and beyond the control of defendant. The application is accompanied by an affidavit filed by defendant Mr. Atma Ram Bansal who has stated that the facts mentioned in the application are true and correct to his knowledge.

2. It is a recent phenomena that the burden of negligence is put on the clerks who are not answerable to anyone. There is no affidavit accompanied with the application of the advocate who had presumed that there was negligence on the part of the clerk. A perusal of facts as given by the advocate would show that he has presumed all these things. There is no way to verify as to what is stated in the application is correct or not since the advocate and the defendant both have claimed that it was the fault of the clerk. I think that the Court should not encourage such kinds of excuses being taken for the negligence in filing the written statement.

3. In AIR 2007 SC 1574 M/s Aditya Hotels (P) Ltd. v. Bombay Swadeshi Stores Ltd. and Ors., the Hon'ble Supreme Court observed that ordinarily the time schedule prescribed under Order 8 Rule 1 is to be honoured. The Defendant should be vigilant. No sooner the writ of summons is served on him, he should take steps for drafting his defence and filing the written statement on the appointed day of hearing without waiting for arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking. After expiry of 90 days, the extension can be granted only by way of an exception and for cogent reasons assigned by the defendant to be recorded by the Court to its satisfaction. Hon'ble Supreme Court further observed that in any case where the defendant is permitted to seek extension of time, when the Court is satisfied that it was a case of laxity or gross negligence on the part of defendant or his counsel, the Court may impose costs for dual purpose i.e to deter the defendant to seek extension of time just for the asking, and to compensate the plaintiff for the delay and inconvenience caused to him.

4. I consider that in the present case, the delay in filing the written statement is not properly explained. The written statement has been filed beyond 90 days and the delay is 25 delays beyond 90 days. However, in the interest of justice, the application is allowed subject to cost of Rs.25,000/- to be paid to the plaintiff. IA No.579/2008 1. This application is made under Order 8 Rule 10 read with Section 151 on behalf of the plaintiff for pronouncement of judgment against the defendants in absence of any written statement. Since this Court has allowed the application being IA No.845 of 2008 and has taken on record the written statement, subject to payment of cost of Rs.25,000/- to the plaintiff, this application would be considered only if cost is not paid. The application is, therefore, kept pending. IA No. 844/2008 1. This application under Order 8 Rule 11 read with Section 151 CPC has been made by the defendants for dismissal of the suit on the ground that the suit for specific performance has been filed on the basis of an unregistered and unstamped agreement to sell. It is also stated that it was the plaintiff who failed to comply with the terms of the agreement and was not registered. 2. An agreement to sell where the possession is not delivered and entire consideration is not paid, does not require to be registered. As far as stamp duty is concerned, the Court cannot dismiss the suit on this ground since there is an option available to the Court to impound the document and send it to the Collector of Stamps for imposition of penalty and for getting it stamped. I, therefore, dismiss this application being groundless. CS(OS)

No.927/2007 Cost be paid by defendants to the plaintiff within two weeks. Replication be filed within four weeks, on payment of costs and after supply of copy of the written statement. List on 23rd May 2008.

March 20, 2008

Sd./-
SHIV NARAYAN DHINGRA J.