

Anita Chhabra & Ors vs Surender Kumar on 28 July, 2022

Author: C. Hari Shankar

Bench: C. Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 548/2022 and CM 26752/2022

ANITA CHHABRA & ORS.

Through:

..... Peti

Ms. Sagarika Wadhwa, A

versus

SURENDER KUMAR

Through:

..... Respo

Mr. Rohit Khurana, Adv

+ CM(M) 560/2022 and CM 27127/2022

ANITA CHHABRA & ORS.

Through:

..... Peti

Ms. Sagarika Wadhwa, A

versus

SURENDER KUMAR

Through: Mr. Rohit Khurana, Adv.

..... Respondent

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% 28.07.2022

1. Today, at the outset, Ms. Wadhwa, learned Counsel for the petitioners, acknowledges that the additional documents, which, by the impugned order dated 4th December 2021 passed by the learned Commercial Courts, were not permitted to be taken on record, were actually filed 34 days after the filing of the plaint by the petitioner and that, therefore, the statement earlier made, and recorded in the order dated 1st June 2022, passed by this Court in the present proceedings, that the documents were filed within the 30 days window period provided in Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC), as amended by the Commercial Courts Act, is not correct.

2. Ms. Wadhwa seeks, however, to rely on the order dated 10th January 2022, passed by the Supreme Court in Re: Cognizance for Extension of Limitation (Suo Motu Writ Petition (C) 3/2020) which, in para 5(I) excludes, "for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings", the entire period from 15th March 2020 to 22nd February 2022. Ms. Wadhwa's submission is that the period of 30 days stipulated in Order XI Rule 1(4) of the CPC is unquestionably a period of limitation and that, therefore, this period would stand excluded till 28th February 2022. As such, she submits that additional documents having been filed by the petitioners within the "excluded period" as envisaged

by the Supreme Court, they could not be treated as having been filed beyond the period of limitation stipulated in Order XI Rule 1(4) of the CPC as amended by the Commercial Courts Act.

3. As such, Ms. Wadhwa's submission is that no occasion arises, in fact, to take recourse of Order XI Rule 1(4) of the CPC.

4. Mr. Khurana, learned Counsel for the respondent, on the other hand, invites my attention to para 8.4 of the report in *Sudhir Kumar v. Vinay Kumar G.B.* 1. He specifically relies on the following passage from the said judgment:

AIR 2021 SC 4303 "8.4 Now, so far as the other documents sought to be relied on/produced as additional documents other than the invoices are concerned the same stands on different footing.

It is not disputed and in fact it was specifically admitted and so stated in the application that those additional documents other than the invoices were in their possession but not produced being voluminous and that the suit was filed urgently. However, it is to be noted that when the second suit was filed, it cannot be said to be urgent filing of the suit for injunction, as the first suit was filed in the month of October, 2018 and there was an ex parte ad interim injunction vide order dated 29.10.2018 and thereafter plaintiff withdrew the said first suit on 27.07.2019 with liberty to file a fresh suit as per the Commercial Courts Act and the second suit came to be filed on 31.08.2019 after period of one month of the withdrawal of first suit. Therefore the case on behalf of the plaintiff that when the second suit was filed, it was urgently filed therefore, the additional documents sought to be relied upon other than the invoices were not filed as the same were voluminous cannot be accepted. And therefore as such Order XI Rule 1 (4) shall not be applicable, though the application was filed within thirty days of filing of the second suit. While seeking leave of the court to rely on documents, which were in his power, possession, control or custody and not disclosed along with plaint or within the extended period set out in Order XI Rule 1 (4), the plaintiff has to establish the reasonable cause for non disclosure along with plaint."

(Emphasis supplied)

5. The afore-extracted passage from *Sudhir Kumar*¹ may not help the respondent. In that case, the Supreme Court found, specifically, on the facts before it, that the plaint filed by the plaintiff could not be treated as having been "urgently filed". Though Mr. Khurana did seek to venture a submission that the plaint in the present case was also not urgently filed, the submission appears to have been made merely in terrorem, as there is no specific protocol prescribed for "urgent filing"

in the CPC, as amended by the Commercial Courts Act, and facts such as those which were before the Supreme Court are not readily forthcoming in the present case.

6. Mr. Khurana, however, seeks a short adjournment to address further submissions, as he states that the plea of applicability of the order of the Supreme Court in *Re: Cognizance for Extension of Limitation (Suo Motu Writ Petition (C) 3/2020)* has been taken by Ms. Wadhwa for the first time.

7. Accordingly, renotify for continuation of submissions as part heard on 5th August 2022.

C. HARI SHANKAR, J JULY 28, 2022 r.bararia