

R-3,4,&10(C) Of The Delhi High Court ... vs Balaji Action Buildwell on 10 January, 2019

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 1683/2016, IA No.13688/2017 (u/S 151 CPC), IA

No.13689/2017 (u/O XI R-1,3&5 CPC), IA No.10200/2018 (u/O VII

R-3,4,&10(c) of the Delhi High Court (Original Side) Rules, 2018) &

CC(COMM) No.38/2018

UNILIN BEHEER B.V.

..... Plaintiff

Through: Mr. Pravin Anand & Mr. Dhruv

Anand, Advs.

Versus

BALAJI ACTION BUILDWELL

..... Defendant

Through: Mr. Chander M. Lall, Sr. Adv. with

Ms. Nancy Roy & Mr. Sanuj Das,

Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 10.01.2019

1. The plaintiff has instituted this suit for permanent injunction restraining the defendant from infringing the patent of the plaintiff and for ancillary reliefs. No interim relief was granted to the plaintiff and the patent has now expired. Thus, the relief claimed in this suit, insofar as of injunction, does not survive and the suit is being pursued only for the relief of damages.

2. The defendant, besides contesting the suit has on 23rd February, 2018 filed a counterclaim challenging the validity of the patent and in accordance with order dated 29th January, 2018, the plaintiff was to file written statement thereto within 30 days i.e. on or before 22nd March, 2018 and notice of which counterclaim was issued to the plaintiff on 29th January, 2018.

3. The plaintiff filed written statement to the counterclaim only on 19th April, 2018 and refiled the same on 2nd May, 2018 and finally on 10th October, 2018. There is no order till date condoning the delay in filing the written statement to the counterclaim and / or taking the written statement to the counterclaim on record. No application even, for condonation of delay has been filed.

4. The contention of the senior counsel for the defendant is, that in terms of Rule 3 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018, the written statement to the counterclaim is not to be taken on record since the same was not accompanied with an affidavit of admission / denial of documents.

5. The counsel for the plaintiff draws attention to Rule 14 of Chapter I of the said Rules which empowers the Court to, for sufficient cause, excuse the parties from compliance with any requirement of the Rules.
6. The counsel for the plaintiff states that since the Rules were notified only on 1st March, 2018, the delay on the part of the plaintiff in complying with the Rule 3 of Chapter VII be exempted.
7. Rule 3 uses the word „Shall and considering the objective of the Commercial Courts Act, 2015 and the enactment of the Rules was to expedite disposal of commercial courts suits, as the present suit is, if the Courts were to read the word „Shall in Rule 3 of Chapter VII as „May , the same would negate the legislative intent and there would be no difference left between commercial and ordinary suits. It thus prima facie appears that no such condonation can be permitted. Reference can be made to Xerox Corporation Vs. P.K. Khansaheb 2018 SCC OnLine Del 12863.
8. The counsel for the plaintiff has also argued that the plaintiff, in the written statement to the counterclaim, has dealt with each and every document of the defendant / counterclaimant and the same amounts to admission / denial.
9. The Rules aforesaid having expressly provided for filing of an affidavit of admission / denial along with the written statement and having further provided that the written statement shall not be taken on record unless accompanied by the said affidavit, it again appears that admission / denial in the pleadings would not suffice compliance with the said Rule.
10. During the course of hearing, the nature of the patent has also been enquired. It is informed that the patent is in interlocking floor boards.
11. I have enquired from the counsel for the plaintiff, the novelty in such interlocking boards, even if for installation on the floor. Prima facie, again it appears that there is no real prospect of the plaintiff succeeding in the claim for damages.
12. It is deemed appropriate to hear the counsels on all the aforesaid aspects.
13. List for the said purpose on 9th April, 2019.

RAJIV SAHAI ENDLAW, J JANUARY 10, 2019 „gsr ..