

**PIC Departmentals Pvt. Ltd.**

**v.**

**Sreeleathers Pvt. Ltd.**

(Civil Appeal No. 8968 of 2024)

30 July 2024

**[Sudhanshu Dhulia\* and Ahsanuddin Amanullah,\* JJ. ]**

### **Issue for Consideration**

Issue arose as to whether the judgment of the Division Bench of the High Court was justified in allowing extension of time for filing written statement after a considerable delay of 17 years.

### **Headnotes<sup>†</sup>**

**Rules of the High Court at Calcutta (Original Side), 1914 – Chapter XXXVIII r.46, Chapter IX rr.2, 35, Chapter X r.27 – Filing of written statement – Power to extend time, after a considerable delay:**

**Held:** Power to extend time for filing written statement should not be employed as a matter of course, but with great caution so that the purpose of the procedural statute is not defeated and unscrupulous litigants do not abuse the process of the Court by adopting dilatory tactics – However, the same cannot be examined in a strait-jacket compartment for the peculiar facts and circumstances of every case have to be carefully and individually appreciated – Thereafter, the concerned Court would take a call as to whether the request made is genuine or, whether refusal to accede to such request may lead to eventual miscarriage of justice – Procedural technicalities have to give way to substantive justice – Procedure, well and truly, is only the handmaiden of justice – Discretion granted to Courts has to be exercised on a case-specific basis – Sequence of events clearly indicates that the respondent cannot be said to be solely at fault since it was under the impression that the suit already stood disposed of and thus, there was no requirement/occasion to file the written statement – Case was listed suddenly after a prolonged gap of 17 years, in 2017, whereafter the respondent filed an appropriate application – Moreover, the reports submitted by the Registry of the High Court indicated that the official website of the High Court states that the suit had been disposed of in 2000, and; the High Court could not, for reasons best known to it alone, trace out any

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orders in the file of the suit pre-2017 – Situation that prevailed is a direct result of the confusion created by the Registry of High Court – It would be improper to not permit the taking on record of the written statement of the respondent apropos the suit – Thus, discretion rightly exercised by the Division Bench in favour of the respondent. [Paras 15-17]

### Case Law Cited

*Jayshree Tea & Industries v. General Magnets*, **2007 SCC Online Cal 577**; *Prakash Corporates v. Dee Vee Projects Limited* [\[2022\] 8 SCR 889](#) : (2022) 5 SCC 112; *Kailash v. Nanhku* [\[2005\] 3 SCR 289](#) : (2005) 4 SCC 480; *Salem Advocate Bar Association T.N. v. Union of India* [\[2005\] Supp. 1 SCR 929](#) : (2005) 6 SCC 344; *R.N. Jadi and Bros. v. Subhashchandra* [\[2007\] 8 SCR 241](#) : (2007) 6 SCC 420; *Zolba v. Keshao* [\[2008\] 5 SCR 963](#) : (2008) 11 SCC 769; *Mohammed Yusuf v. Fajj Mohammad* [\[2008\] 17 SCR 20](#) : (2009) 3 SCC 513; *Atcom Technologies Limited v. Y.A. Chunawala and Company* (2018) 6 SCC 639; *State of Gujarat v. Ramprakash P Puri* [\[1970\] 2 SCR 875](#); *Sushil Kumar Sen v. State of Bihar* [\[1975\] 3 SCR 942](#) : (1975) 1 SCC 774; *State v. M Subrahmanyam* [\[2019\] 7 SCR 287](#) : (2019) 6 SCC 357; *Mahadev Govind Gharge v. The Special Land Acquisition Officer, Upper Krishna Project* [\[2011\] 8 SCR 829](#) – referred to.

### List of Acts

Rules of the High Court at Calcutta (Original Side), 1914.

### List of Keywords

Written statement; Extension of time for filing written statement; Procedural statute; Unscrupulous litigants; Abuse the process of the Court; Miscarriage of justice; Procedural technicalities.

### Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8968 of 2024  
From the Judgment and Order dated 22.03.2024 of the High Court at Calcutta in APO No. 147 of 2023

### Appearances for Parties

Dr. S. Muralidhar, Sr. Adv., Indranil Ghosh, Arup Bhattacharyya, Palzer Moktan, Ms. Suparna Mukherjee, Ms. Mrinal Chaudhry, Ms. Mehar Bedi, Kartik, Ms. Aanchal Tikmani, Advs. for the Appellant.

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Rana Mukherjee, Sr. Adv., Ms. Daisy Hannah, Sumanta Biswas, Bikash Shaw, Samarth Mohanty, Ms. Oindrila Sen, Advs. for the Respondent.

**Judgment / Order of the Supreme Court****Order****Sudhanshu Dhulia & Ahsanuddin Amanullah, JJ.**

Leave granted. The sequence of events relevant to resolve the short controversy is noticed below.

2. This dispute traces its origins to the alleged act of putting-up of a signboard by the respondent on the subject-premises,<sup>1</sup> which according to the appellant, obstructed the hoarding put up by the appellant. Thus, the appellant/plaintiff filed C.S. No.549/1999 on around 30.09.1999 (hereinafter referred to as the “suit”) for declaration and permanent injunction before the Calcutta High Court (hereinafter referred to as the “High Court”) against the respondent/defendant. The position of the parties was that the appellant was a tenant on the ground floor of the building in question, whereas the respondent was a tenant on the first floor.
3. Summons in the suit was served on the respondent, which entered appearance on 03.02.2000. On 29.02.2000, an interim order of restraint was passed by the High Court, in terms of prayer (a) made in application G.A. No.4229/1999 filed by the petitioner in the suit.
4. It appears that the official website of the High Court showed the status of the suit as having been ‘disposed of’ on 01.03.2000. However, on 11.12.2001, the appellant filed Contempt Case No.333/2001 alleging violation of the interim order dated 29.02.2000. Later, on 25.01.2010, by way of a Deed of Conveyance, the original owners of the premises sold the same to M/s TUG Developers Private Limited (hereinafter referred to as “TUG Developers”), which is a subsidiary of the respondent.
5. On 08.09.2015, TUG Developers issued a notice of eviction to the appellant on the grounds of sub-letting and non-payment of rent and for terminating the tenancy/lease with effect from October,

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<sup>1</sup> 3 and 4, Lindsay Street, Kolkata – 700 087.

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2015. On 17.01.2017, the suit was listed suddenly before the High Court, which directed the Registrar (Listing) to submit a report on the status of the suit as the learned Single Judge noticed that the website reflected the status of the suit as being disposed of. On 25.01.2017, the Registrar (Listing) submitted his report stating that the case appeared to have been disposed of on 01.03.2000 and that the matter was listed as '*to be mentioned*' on 17.01.2017 in terms of the instructions received from the High Court. On 30.01.2017, the Court directed the suit to be listed in February, 2017. This led to the respondent filing application G.A. No.693/2017<sup>2</sup> in the suit, seeking extension of time to file Written Statement, along with a copy thereof.

6. Ejectment Suit No.34/2018 was filed by TUG Developers seeking ejectment of the appellant from the premises.
7. The High Court on 21.04.2023 asked for a report from its Registry as to how the suit was shown as disposed of to which the Registrar (Original Side) responded by submitting a report on 11.05.2023 stating that there were no details of any orders available in the file prior to 17.01.2017. On 12.06.2023, the learned Single Judge dismissed G.A. No.693/2017. Contempt Case No.331/2001 was also disposed of on 13.06.2023 on a statement by the appellant that the same had become infructuous.
8. Aggrieved by the learned Single Judge's order dated 12.06.2023 *supra*, the respondent preferred A.P.O. No.147/2023 before the Division Bench of the High Court, which, by judgment dated 22.03.2024 allowed the appeal. This judgment of the Division Bench is assailed in the instant appeal.
9. By the Impugned Judgment dated 22.03.2024, the Division Bench found sufficient cause on the ground of the confusion relating to pendency of the suit as also the principle that matter is best adjudged on merits rather than being thrown out on technicalities and the aim of the Court to do substantial justice between the parties rather than disposing of the matter on technical grounds unless a party is guilty of gross negligence or whatever, as described hereinabove; took

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2 For clarity, G.A. No.693/2017 was later re-numbered as G.A. No.4/2017. In the context of the suit, both refer to one and the same application.

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note of Chapter XXXVIII Rule 46<sup>3</sup> of the Rules of The High Court at Calcutta (Original Side), 1914 (hereinafter referred to as the 'Rules'), and; permitted the Written Statement of the respondent to be taken on record subject to payment of Rs.25,000/- (Rupees Twenty Five Thousand) to the appellant as costs. Resultantly, the Registry of the High Court on 15.04.2024 accepted the Written Statement of the respondent in the suit. However, though costs of Rs.25,000/- (Rupees Twenty Five Thousand) were tendered by the respondent to the appellant, it was refused to be accepted.

**SUBMISSIONS BY THE APPELLANT:**

10. Learned senior counsel for the appellant submitted that the respondent was served with summons on 28.01.2000, yet it chose not to file any Written Statement. It was submitted that an application seeking extension of time to file Written Statement was filed only in the year 2017, which clearly deserves to be dismissed. It was further contended that the Rules do not permit condonation of delay in filing of Written Statement beyond a period of 21 days. For such proposition, reliance was placed on the judgment of the High Court in **Jayshree Tea & Industries v General Magnets, 2007 SCC Online Cal 577**, which held that the Rules take precedence over the Code of Civil Procedure, 1908. Learned senior counsel informed us that **Jayshree Tea** (*supra*) was carried up to this Court, which dismissed the challenge thereto by Order dated 20.01.2014 in S.L.P. (C) No.378/2014. It was submitted that Chapter XXXVIII Rule 46 of the Rules cannot be used to defeat the very object of the Rules, specifically in the absence of any cogent reasons having been shown in this behalf by the respondent. Reliance was also placed on the judgment in **Prakash Corporates v Dee Vee Projects Limited (2022) 5 SCC 112**.
11. He submitted that this Court has held that discretion to allow defendants to file Written Statement beyond the 90-day period, could be exercised only if it is specifically found that it is not a case of laxity or gross negligence or if it is an exceptionally hard case. Reliance

3 <sup>46. Power to enlarge or abridge time. – The Court or a Judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is Not made until after the expiration of the time appointed or allowed.'</sup>

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was also placed on the decisions in *Kailash v Nanhku* (2005) 4 SCC 480; *Salem Advocate Bar Association T.N. v Union of India* (2005) 6 SCC 344; *R.N. Jodi and Bros. v Subhashchandra* (2007) 6 SCC 420; *Zolba v Keshao* (2008) 11 SCC 769; *Mohammed Yusuf v Faij Mohammad* (2009) 3 SCC 513, and; *Atcom Technologies Limited v Y.A. Chunawala and Company* (2018) 6 SCC 639.

### SUBMISSIONS BY THE RESPONDENT:

12. *Per contra*, learned senior counsel for the respondent/caveator submitted that in the facts and circumstances of the present case, the discretion employed by the Division Bench in allowing the taking on record of the Written Statement of the respondent is perfectly justified. He drew our attention to the Chapter IX Rules 2<sup>4</sup> and 3,<sup>5</sup> Chapter X Rule 27<sup>6</sup> and Chapter XXXVIII Rule 46 of the Rules. In sum, his contention was that the High Court was empowered to enlarge/abridge the time, as had been done in the present case. It was further stated that the sequence of events and list of dates would show that there was neither any deliberate/wilful *laches* nor any lacuna on the part of the respondent in not filing the Written Statement on time, primarily on the ground that as early as on 01.03.2000, the status of the suit was shown as disposed of, which position is factually verified by the subsequent orders of the High Court in the suit and by the reports submitted by its Registry.

4 '2. **Written statements when not to be filed.** – No written statement of a defendant shall be filed unless an appearance has first been entered. No written statement or voluntary statement shall be filed, after the time limited for filing the same by the writ of summons, or any rule, or any order, as the case may be, has expired, except under an order obtained by summons in Chambers taken out prior to the expiry of such time.'

5 '3. **Where written statement is not filed, suit may be transferred to the Peremptory Undefended List.** - Except as provided by Chapter X, rule 27, (a) where the written statement of a sole defendant is, or the written statements of all the defendants are, Not filed within the time fixed by the summons, or within such further time as may be allowed, or (b) where one or more of several defendants has or have failed to enter appearance, and the other or others has or have entered appearance but failed to file a written statement within the time fixed by the summons or further time allowed, or (c) where a defendant, who having obtained an order for transfer of a suit to this Court under section 39 of the Presidency Small Cause Court Act (XV of 1882), and having been directed under the provisions of section 40(2) of that Act to file a written statement, has failed to file the same within the time fixed, the suit shall, unless otherwise ordered by the Judge, Registrar or Master, upon requisition by the plaintiff in writing to the Registrar and production of a certificate showing such default, be transferred to the peremptory list of undefended suits.'

6 '27. **Undefended suits may be kept out of the Peremptory Undefended List by requisition.** - An undefended suit or proceeding Not in the Peremptory List of Undefended Suits, may be kept out of such list for any specified period, on the requisition, in writing of the plaintiff's Advocate acting on the Original Side, or of the plaintiff, if acting in person, under the direction of the Registrar.'

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13. It was further submitted that due to sudden listing of the suit on 17.01.2017, which surprised the respondent, by way of abundant caution, it promptly filed G.A. No.693/2017 in *bona fide*. He prayed for dismissal of the appeal.

**ANALYSIS, REASONING AND CONCLUSION:**

14. Having bestowed our anxious thoughts to the entirety of the *lis* and the submissions canvassed at the Bar, we do not find any ground for interference, particularly with reference to the facts noted above. The propositions laid down in the precedents pressed into service by the learned senior counsel for the appellant cannot be quarrelled with. Yet, they do not aid the appellant due to the unique factual prism herein.
15. Learned senior counsel for the appellant is correct that the power to extend time for filing Written Statement should not be employed as a matter of course, but with great caution so that the purpose of the procedural statute is not defeated and unscrupulous litigants do not abuse the process of the Court by adopting dilatory tactics. However, the same cannot be examined in a strait-jacket/sealed compartment for the peculiar facts and circumstances of every case have to be carefully and individually appreciated. Thereafter, the Court concerned has to take a call as to whether the request made is genuine or, more importantly, whether refusal to accede to such request may lead to an eventual miscarriage of justice. It must not be lost sight of that ultimately, procedural technicalities have to give way to substantive justice. Procedure, well and truly, is only the handmaiden of justice.<sup>7</sup> The discretion granted to Courts has to be exercised on a case-specific basis. Undisputedly, '*procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold*'.<sup>8</sup>
16. In the present instance, we find that the sequence of events clearly indicates that the, respondent cannot be said to be solely at fault for as it was under the impression that the suit already stood disposed

<sup>7</sup> For reference, peruse, *inter alia*, **State of Gujarat v Ramprakash P Puri** [1970] 2 SCR 875; **Sushil Kumar Sen v State of Bihar** (1975) 1 SCC 774, and the more recent, **State v M Subrahmanyam** (2019) 6 SCC 357

<sup>8</sup> **Mahadev Govind Gharge v The Special Land Acquisition Officer, Upper Krishna Project** [2011] 8 SCR 829

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of and thus, there was no requirement/occasion to file the Written Statement. Admittedly, the case was listed suddenly after a prolonged gap on 17.01.2017, whereafter that the respondent filed an appropriate application. Moreover, the reports dated 25.01.2017 and 11.05.2023 submitted by the Registry of the High Court indicate that (a) the official website of the High Court did indeed state that the suit had been disposed of on 01.03.2000, and; (b) the High Court could not, for reasons best known to it alone, trace out any orders in the file of the suit pre-17.01.2017. *Stricto sensu*, the situation that prevailed is a direct result of the confusion created by the Registry of the High Court. In this view, it would be improper to not permit the taking on record of the Written Statement of the respondent apropos the suit.

17. We, thus, find that discretion has rightly been exercised by the Division Bench of the High Court in favour of the respondent. We are in agreement with the reasons assigned by the Division Bench for setting aside the learned Single Judge's order dated 12.06.2023.
18. Payment of costs ordered to be paid to the appellant by the High Court be made within ten days.
19. The High Court is requested to proceed with the matter keeping in mind the suit being of the year 1999 without giving any time/indulgence to any of the parties, in accordance with law. We clarify that we have not expressed any opinion on the merits of the matter.
20. The appeal is dismissed in the above terms.

**POST-SCRIPT:**

21. We request the High Court to take appropriate steps, on the administrative side, to ensure that what has emerged from the reports dated 25.01.2017 and 11.05.2023 does not recur for any other case.

*Result of the case:* Appeal dismissed.