

CASE DETAILS

ADITYA KHAITAN & ORS.

v.

IL AND FS FINANCIAL SERVICES LIMITED

(Civil Appeal Nos. 6411-6418 of 2023)

OCTOBER 03, 2023

[J. K. MAHESHWARI AND K. V. VISWANATHAN, JJ.]

HEADNOTES

Issue for consideration: Whether the High Court was justified in rejecting the application for extension of time dated 20.01.2021 and in not taking the written statements on record.

Code of Civil Procedure, 1908 – Commercial Courts Act, 2015 – Order 8 Rule 1 – Being a Commercial Suit, the 30-day period for filing written statements expired on 08.03.2020 – On 06.06.2020, the further condonable period of 90 days also expired – No written statements were filed within the said timelines – Appellants filed applications on 20.01.2021 for acceptance of written statements by extending time – Applications rejected by the High Court – Propriety:

Held: In *Re: Cognizance for Extension of Limitation* in Suo Motu W.P. (C) No. 3 of 2020, the Supreme Court by order dated 08.03.2021 directed that the period from 15.03.2020 till 14.03.2021 will stand excluded in computing: a) the period prescribed u/ss. 23(4) and 29-A of the Arbitration and Conciliation Act, 1996; b) S.12-A of the Commercial Courts Act, 2015; c) provisos (b) and (c) of s.138 of the Negotiable Instruments Act, 1881; and (d) any other laws which prescribe period of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings – By virtue of s.16 of the Commercial Courts Act, 2015 brought into force on 23.10.2015 some provisions of the Code of Civil Procedure, 1908 in its application to the commercial disputes were amended – The schedule to the Commercial Courts Act amended Order 5 Rule 1(1), Order 8 Rule 1 and Order 8 Rule 10 insofar as their applicability to commercial disputes was concerned – The outer limit u/Or. 8, r.1 within

which the court or tribunal can condone the delay is 120 days from the date of summons – In the instant case, while summons was served on 07.02.2020, the 30 days period expired on 08.03.2020 and the outer limit of 120 days expired on 06.06.2020 – The application for taking on record the written statements and the extension of time was filed on 20.01.2021 – Applying the orders of 08.03.2021 and the orders made thereafter and excluding the time stipulated therein, the applications filed by the applicants on 20.01.2021 are well within time – Thus, judgment passed by the High Court set aside and the written statements filed on 20.01.2021 are directed to be taken on record. [Paras 15, 16, 19, 20, 21 and 22]

Maxims – *Vigilantibus non dormientibus jura subveniunt* – Meaning of:

Held: The law assists those who are vigilant, not those who sleep over their rights is a fundamental legal maxim on which statutes of limitations are premised. [Para 9]

LIST OF CITATIONS AND OTHER REFERENCES

Sagufa Ahmed and Others v. Upper Assam Plywood Products Private Limited and Others (2021) 2 SCC 317 : [2020] 9 SCR 472; *Prakash Corporates v. Dee Vee Projects Limited*, (2022) 5 SCC 112 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6411-6418 of 2023.

From the Judgment and Order dated 26.02.2021 of the High Court at Calcutta in IA GA Nos.3, 4, 5, 6, 7, 8, 9 and 10 of 2021.

Appearances:

Sanjoy Ghose, Sr. Adv., Jeevan Ballav Panda, Satish Padhi, Gaurav Sharma, Ms. Dhriti Mehta, Rohan Mandal, M/s Khaitan & Co., Rohan Batra, Rishabh Bhargava, Harsh Vardhan Arora, Advs. for the Appellants.

Sahil Tagotra, Rishad Medora, Ms. Abhivyakti Banerjee, Ms. Sakshi Garg, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

K. V. VISWANATHAN, J.

1. Leave granted.

2. The present appeals challenge the judgment of the High Court at Calcutta dated 26.02.2021 passed in General Application Nos. 3,4,5,6,7,8,9 and 10 of 2021 in Civil Suit No. 177 of 2019. By the said judgment, the High Court had dismissed the said applications and consequently denied the applicants/defendants prayer to take on record their written statements. According to the High Court, the applications cannot be allowed as the period of 30 days to file the written statements had expired on 08.03.2020. The High Court has held that the order dated 23.03.2020 passed by this Court in *Suo Motu Writ Petition (C) No. 3 of 2020 [In Re: Cognizance for Extension of Limitation]*, which is to be effective from 15.03.2020 would not enure to the benefit of the applicants/defendants since the limitation period for filing the written statements had expired on 08.03.2020. The High Court has further held that, as held in ***Sagufa Ahmed and Others Vs. Upper Assam Plywood Products Private Limited and Others*** (2021) 2 SCC 317, since the orders of this Court under Article 142 of the Constitution of India extended only “the period of limitation” and not the period up to which delay can be condoned, the applications for taking on record the written statements cannot be entertained.

Relevant Facts:

3. To understand the correctness or otherwise of the judgment impugned, the following basic facts are necessary:-

i) On 30.08.2019, the respondent herein – IL and FS Financial Services Limited (the plaintiff) filed a suit for recovery of money along with other consequential reliefs in C.S. No. 177 of 2019 on the file of the High Court at Calcutta. There were nine defendants. The said nine defendants are appellants before us.

ii) On 07.02.2020, summons was served in the suit on the defendants. Being a Commercial Suit, the 30-day period for filing written statements expired on 08.03.2020. On 06.06.2020, the further condonable period of 90 days also expired.

iii) No written statements having been filed within the said timelines, the appellants, on 20.01.2021, filed in all eight applications for the nine defendants. The prayer in the applications was that the written statements of the defendants be accepted by extending the time. The reasons set out in the affidavit were that the World Health Organization declared COVID-19 as a pandemic on 11.03.2020; that the Government of India and the State Governments issued advisories related to the pandemic; that on 11.03.2020, orders were promulgated by the Government of India under the Disaster Management Act, 2005 to enhance the preparedness and containment of the pandemic; that the Government of West Bengal on 22.03.2020 imposed lockdown w.e.f. 23.03.2020; that during the month of April, 2020, the office of the answering applicants was completely closed. Most importantly, the affidavits relied on the order of this Court dated 23.03.2020 in *In Re: Cognizance for Extension of Limitation in Suo Motu W.P. (C) No. 3 of 2020* whereby this Court took suo motu cognizance of the situation and extended the period of limitation w.e.f. 15.03.2020 till further orders. The applicants also referred to the order of 10.07.2020 wherein this Court further extended the period of limitation, in connection with certain specific statutes. They averred that since the further period of 90 days had not expired at the time when the aforesaid order of 23.03.2020 was passed, they sought refuge under the orders of this Court dated 23.03.2020 and 10.07.2020.

iv) These applications were vehemently opposed by the plaintiffs by their reply of 17.02.2021. Their objection was that the orders of this Court dated 23.03.2020 and 10.07.2020 would not come to the rescue of the applicants since the limitation period had expired prior to 15.03.2020.

v) The plaintiff relied on the judgment of this Court dated 18.09.2020 in *Sagufa Ahmed (supra)* in support of its contention. The High Court having accepted the stand of the plaintiff did not take the written statements on record. Aggrieved the applicants/defendants are before us.

Contentions:

4. We have heard Mr. Sanjoy Ghose, learned Senior Counsel for the appellants and Mr. Sahil Tagotra, learned Counsel for the respondent/plaintiff.

5. Mr. Sanjoy Ghose, learned Senior Counsel for the appellants, by placing reliance on the judgment of this Court in ***Prakash Corporates vs. Dee Vee Projects Limited***, (2022) 5 SCC 112 submitted that much water has flown after the judgment of ***Sagufa Ahmed (supra)***.

6. According to the learned Senior Counsel, ***Prakash Corporates (supra)*** while noticing the orders of 23.03.2020, 06.05.2020 and 10.07.2020 also deals with the directions in the orders of 08.03.2021, 27.04.2021 and 23.09.2021 made in the same *In re: Cognizance for Extension of Limitation*. Noticing these subsequent orders, according to the learned Senior Counsel, the Court has, in paras 28.1, 28.2 and 33.4 of ***Prakash Corporates (supra)*** has, for the reasons set out therein, distinguished ***Sagufa Ahmed's case (supra)***. The said paragraphs are extracted herein below:-

“28.1. Having regard to the purpose for which this Court had exercised the plenary powers under Article 142 of the Constitution of India and issued necessary orders from time to time in SMWP No. 3 of 2020, we are clearly of the view that the period envisaged finally in the order dated 23.09.2021 is required to be excluded in computing the period of limitation even for filing the written statement and even in cases where the delay is otherwise not condonable. It gets perforce reiterated that the orders in SMWP No. 3 of 2020 were of extraordinary measures in extraordinary circumstances and their operation cannot be curtailed with reference to the ordinary operation of law.

28.2. In other words, the orders passed by this Court on 23.03.2020, 06.05.2020, 10.07.2020, 27.04.2021 and 23.09.2021 in SMWP No. 3 of 2020 leave nothing to doubt that special and extraordinary measures were provided by this Court for advancing the cause of justice in the wake of challenges thrown by the pandemic; and their applicability cannot be denied in relation to the period prescribed for filing the written statement. It would be unrealistic and illogical to assume that while this Court has provided for exclusion of period for institution

of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had expired between 15.03.2020 to 02.10.2021) could still be filed within 90 days from 03.10.2021 but the period for filing written statement, if expired during that period, has to operate against the defendant.

33.4 Having regard to the orders subsequently passed by the three-Judge Bench of this Court in SMWP No. 3 of 2020 (and MA No. 665 of 2021 therein), as also having regard to the fundamental difference of facts and the surrounding factors, the said decision in Sagufa Ahmed, in our view, is also of no application to the present case.”

According to the learned Senior Counsel, the above paragraphs squarely cover his case, since the extended period expired on 06.06.2020.

7. Mr. Sahil Tagotra, learned Counsel for the plaintiff reiterated the findings of the High Court and submitted that the applicants have forfeited their right to file the written statements.

8. In the above background, the only question that arises for consideration is, was the High Court justified in rejecting the application for extension of time dated 20.01.2021 and in not taking the written statements on record?

Discussion and Conclusion:

9. “*Vigilantibus non dormientibus jura subveniunt*” - the law assists those who are vigilant, not those who sleep over their rights is a fundamental legal maxim on which statutes of limitations are premised.

10. When the whole world was in the grip of devastating pandemic, it could never have been said that the parties were sleeping over their rights. It is, at this juncture, that this Court stepped in and after taking *suo motu* cognizance passed orders under Article 142 of the Constitution of India extending the deadlines. The extraordinary situation was dealt with rightly by extraordinary orders protecting the rights of parties by ensuring that their remedies and defences were not barred.

11. In *suo motu* proceedings titled *In Re: Cognizance for Extension of Limitation*, series of orders came to be passed. Those orders are dated 23.03.2020, 06.05.2020, 10.07.2020, 08.03.2021, 27.04.2021 and

23.09.2021. The orders are not repeated since the relevant portions are extracted in *Prakash Corporates (supra)*.

12. However, the orders of 23.03.2020 and 08.03.2021 are extracted herein below to show the contrast between the orders that obtained when *Sagufa Ahmed (supra)* was pronounced and the orders passed post- *Sagufa Ahmed (supra)*. *Sagufa Ahmed (supra)* was pronounced on 18.09.2020 when the orders of 23.03.2020, 06.05.2020 and 10.07.2020 were in vogue. The order of 23.03.2020 in *In Re: Cognizance for Extension of Limitation* reads as under: -

“This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the coun-try on account of Covid-19 Virus and resultant diffi-culties that may be faced by litigants across the coun-try in filing their peti-tions/applications/suits/appeals/all other proceed-ings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

(emphasis sup-plied)

13. The order of 06.05.2020 directed that the limitation prescribed under the Arbitration & Conciliation Act, 1996 and under Section 138 of the Negotiable Instruments Act, 1881 shall stand extended w.e.f. 15.03.2020 until further orders. It also provides that in case the limitation had expired after 15.03.2020, the period between 15.03.2020 and lifting of lockdown in the jurisdictional area would be extended for a period of 15 days after the lifting of lockdown. Thereafter, on 10.07.2020, taking note of the submission of the learned Attorney General, this Court extended the order of 23.03.2020 and 06.05.2020 to Section 29A of the Arbitration and Conciliation Act, 1996 and also to Section 23(4) which provided for timelines for completion of statement of claim and defence and also extended time under Section 12A of the Commercial Courts Act, 2015 which prescribed time limit for completing the process of compulsory pre-litigation, mediation and settlement. What is significant is that there was no change in the basic order of 23.03.2020, namely, that what was extended was the period of limitation.

14. It was on this basis that *Sagufa Ahmed's case (supra)* decided on 18.09.2020 held in para 17 as under:-

“17. But we do not think that the appellants can take refuge under the above order in *Cognizance for Extension of Limitation, In re. What was extended by the above or-der of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exer-cise of discretion conferred by the statute.....*”

15. Contrasting the order of 23.03.2020 with 08.03.2021, which order of 08.03.2021 is reiterated in the orders of 27.04.2021 and 22.09.2021, the following emerges. The order of 08.03.2021 needs to be extracted first.

“1. Due to the onset of COVID-19 pandemic, this Court took *suo motu* cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 27.03.2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders. The order dated 15.03.2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is

considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 15.03.2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

2.1. *In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.*

2.2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

2.3. *The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”*

2.4. The Government of India shall amend the guide-lines for containment zones, to state.

“Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

3. The *Suo Motu Writ* Petition is disposed of accordingly”

16. A perusal of para 2.3 of the above order shows that this Court directed that the period from 15.03.2020 till 14.03.2021 will stand excluded in computing:-

- a) the period prescribed under 23(4) and 29-A of the Arbitration and Conciliation Act, 1996;
- b) Section 12-A of the Commercial Courts Act, 2015;
- c) provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881; and
- (d) any other laws which prescribe period of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

17. As would be clear from hereinabove, the very basis of the judgment in *Sagufa Ahmed (supra)* that under the 23.03.2020 order, only the period of limitation has been extended and not the period up to which delay can be condoned, has been taken away by expanding the protection by excluding the period even for computing outer limits within which the court or tribunal can condone delay. This is an important subsequent aspect which has a great bearing in deciding the present controversy.

18. *Prakash Corporates case (supra)* also notices the fact that the order of 08.03.2021 and subsequent orders also by a Bench of three Hon’ble Judges were not and could not have been available for the Bench which decided *Sagufa Ahmed’s case (supra)* since *Sagufa Ahmed’s case (supra)* was decided on 18.09.2020. In *Prakash Corporates (supra)*, though the period of 30 days for filing written statements expired on 05.02.2021 and the 120-day outer limit expired on 06.05.2021, written statements notarized on 07.07.2021 was directed to be taken on record. The Court in *Prakash Corporates (supra)* relied on the orders of 23.03.2020, 08.03.2021, 27.04.2021 and also noticed the order of 23.09.2021 while so ordering.

19. By virtue of Section 16 of the Commercial Courts Act, 2015 brought into force on 23.10.2015 some provisions of the Code of Civil Procedure, 1908 in its application to the commercial disputes

were amended. The schedule to the Commercial Courts Act amended Order 5 Rule 1(1), Order 8 Rule 1 and Order 8 Rule 10 insofar as their applicability to commercial disputes was concerned. Order 8 Rule 1 reads as under:

“Order 8 Rule 1

“1. Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

20. As would be seen from the above, the outer limit within which the court or tribunal can condone the delay is 120 days from the date of summons.

21. As has been set out hereinabove, while summons was served on 07.02.2020, the 30 days period expired on 08.03.2020 and the outer limit of 120 days expired on 06.06.2020. The application for taking on record the written statements and the extension of time was filed on 20.01.2021. Applying the orders of 08.03.2021 and the orders made thereafter and excluding the time stipulated therein, the applications filed by the applicants on 20.01.2021 are well within time. The judgment passed by the High Court, for the reasons set out herein above, needs to be set aside. The principle underlying the orders of this Court dated 08.03.2021, 27.04.2021 and 23.09.2021, in *In Re: Cognizance for Extension of Limitation*, albeit those orders being passed, subsequent to the impugned order, would enure to the benefit of the applicants-defendants.

22. For the reasons stated above, the Appeals are allowed and the written statements filed on 20.01.2021 are directed to be taken on record. The suit be proceeded with thereafter. The Appeals stand allowed with no order as to costs.

Headnotes prepared by:
Ankit Gyan

Appeals allowed.