

2022 LiveLaw (SC) 520

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

M.R. SHAH; B.V. NAGARATHNA, JJ.

MAY 09, 2022

CIVIL APPEAL NO. OF 2022 (@ Special Leave Petition (C) No. 2522/2022)

BABASAHEB RAOSAHEB KOBARNE & ANR. *Versus* PYROTEK INDIA PRIVATE LIMITED & ORS.

Commercial Courts Act, 2015 - Order excluding period between 15.03.2020 till 28.02.2022 for the purposes of limitation in Re: Cognizance of Extension Of Limitation 2022 LiveLaw (SC) 31 - Applicable with respect to the limitation prescribed under the Commercial Courts Act, 2015 also. - Referred to Centaur Pharmaceuticals Pvt. Ltd. And Anr. v. Stanford Laboratories Pvt. Ltd.

(Arising out of impugned final judgment and order dated 13-12-2021 in WP No. 6191/2021 passed by the High Court of Judicature at Bombay)

For Petitioner(s) Ms. Manisha T. Karia, AOR Ms. Nidhi Nagpal, Adv. Mr. Adarsh Kumar, Adv. Ms. Sukhda Kalra, Adv. For Respondent(s) Mr. Abhishek Khare, Adv. Ms. Lalita Kohli, Adv Mr. Abhishek Swarup, Adv Mr. Sanat Ragde, Adv. Mr. Vikrant Nehra, Adv Mr. Chetan Sharma, Adv M/S. Manoj Swarup And Co., AOR

ORDER

Leave granted.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 13.12.2021 passed by the High Court of Judicature at Bombay in Writ Petition No.6191 of 2021, by which the High Court has dismissed the said writ petition and has confirmed the order passed by the learned Trial Court, refusing to take the written statement on record and has refused to condone the delay in filing the written statement, the original defendants have preferred the present appeal.

From the impugned judgment and order passed by the High Court, it appears that the High Court has refused to condoned the delay and take on record the written statement on the ground that the period of 120 days within which the written statement could have been taken on record, expired on 09.05.2020 which was during the lock-down imposed. Therefore, the High Court has refused to condone the delay and take the written statement on record.

Having heard the learned counsel appearing on behalf of the respective parties and having considered order dated 10.01.2022 passed by this Court in Miscellaneous Application No.21/2022 by which the following order was passed and order dated 04.01.2022 passed by this Court in SLP (C) No.17298/2021 in the case of Centaur Pharmaceuticals Pvt. Ltd. & Anr. Vs. Standford Laboratories Pvt. Ltd., the impugned order passed by the High Court is unsustainable. The operative portion of the order passed by this Court in Miscellaneous Application No.21/2022 reads as under –

“1. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021. It is directed that the period from

15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A 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.”

In that view of the matter, the period from 15.03.2020 till 28.02.2022 shall have to be excluded 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 Commercial Courts Act, 2015 being a Special Law, the said order shall also be applicable with respect to the limitation prescribed under the Commercial Courts Act, 2015 also.

In view of the above and for the reasons stated above and more particularly when the 120 days period expired in the present case on 09.05.2020 which was during the aforesaid period as prescribed by this Court in the aforesaid order, the High Court ought to have excluded the aforesaid period for the purpose of filing the written statement and ought to have permitted to take the written statement on record. The impugned judgment and order passed by the High Court refusing to condone the delay and take on record the written statement is hereby quashed and set aside. It is directed that the written statement, already filed, be taken on record and the same be considered in accordance with law.

It is reported that an interim injunction application is pending before the learned Trial Court since long. We direct the learned Trial Court to finally decide and dispose of the interim injunction application at the earliest and preferably within a period of six weeks from the date of receipt of the present order.

The Appeal is accordingly allowed to the aforesaid extent. No costs.