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REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 247 OF 2021
IN
COMMERCIAL SUIT NO. 67 OF 2015**

La Fin Financial Services Pvt Ltd ...Applicant/
Plaintiff

Versus

Multi Commodity Exchange Of India Ltd ...Defendant

Mr Vikram Nankani, Senior Advocate, with Gulnar Mistry, Arvind Lakhawat, Chaitanya D Mehta and Sonali Aggarwal, i/b Dhruve Liladhar & Co, for the Plaintiff/Applicant.

Mr Sameer Pandit, with Sarrah Khambati & Anuj Jain, i/b Wadia Ghandy & Co, for the Defendant.

CORAM: G.S. PATEL, J

DATED: 21st September 2021

PC:-

1. Mentioned. Not on board. Taken on board.
2. Yesterday, I passed an order in the Interim Application filed by the Plaintiff. I permitted Mr Nankani to withdraw it. Today, Mr

Nankani mentions the matter. He now states that neither he nor his attorneys have, or yesterday had, instructions to make that withdrawal. He says that there was a misunderstanding in regard to the order that was passed yesterday.

3. I do not see how there could have been misunderstanding, since the one thing I am not accused of is being inaudible whether in physical Court or online. But I will let that pass. Instead, I will immediately recall yesterday's order on the Interim Application and immediately take it up for hearing and final disposal. Mr Nankani and Mr Pandit have no objection to my taking it immediately for final disposal. Yesterday's order on the Defendant's Notice of Motion remains.

4. The Suit is today registered as a Commercial Suit covered by the Commercial Courts Act 2015. It is abundantly clear from a reading of a statute and from the decision of Hon'ble Justice SJ Kathawalla in *Axis Bank Ltd v Mira Gehani & Ors*,¹ that the maximum period within which a Defendant must enter a Written Statement is 120 days. The Court has no power to extend time beyond that period. Ordinarily, the Written Statement must be entered within 30 days of service of the Writ of Summons. In a recent judgment, I held that the service of the Writ of Summons must be in terms of Order 5 Rule 2 of the Code of Civil Procedure 1908 ("CPC"), that is to say, the Writ of Summons must be accompanied by a copy of the Plaint.²

1 2019 SCC OnLine Bom 358.

2 Atlanta Ltd v Metso India Pvt Ltd, 2021 SCC OnLine Bom 1594.

5. Had this suit originally been lodged/filed as a Commercial Suit on the date of its institution, all this law would undoubtedly have applied. But that is not what happened. The suit was instituted on 5th November 2015. By that time, the Commercial Courts Act 2015 had already come into force with effect from 23rd October 2015. Yet, the present suit was not instituted in the Commercial Division at all. Instead, it was lodged and filed as a regular suit, i.e. one to which the provisions of Commercial Court Act 2015, and, therefore, the limitation period for filing a Written Statement, do not, and did not, apply.

6. The Plaintiff had a Writ of Summons issued on 5th December 2015. It was served along with a copy of the Plaint on the sole Defendant on 28th January 2016. At the date of service of the Writ of Summons, the suit was still lodged and filed as a regular suit, not as a Commercial Suit.

7. There were objections from the Registry. Some orders were passed. These are not material today and no purpose is served by examining those since they are not under challenge or revision. As Mr Pandit points out, the Registry issued a notice with a list of suits to be transferred to the Commercial Division of this Court, and asking those with objections to the transfer to come forward. The Plaintiff did nothing. That is how the Suit came to be transferred to the Commercial Division, where it was finally numbered as a Commercial Suit on 18th October 2016.

8. Meanwhile, following an order of the Registry passed on 20th January 2017, the Written Statement was allowed to be taken on record. There is an endorsement by the Prothonotary & Senior Master granting the Defendant time to file this Written Statement.

9. If we reckon time from the date the suit entered the commercial division, the Written Statement is well within limitation. Nobody disputes that position. The argument in the Interim Application, however, is that since the suit is now numbered as a Commercial Suit therefore the provisions of the Commercial Courts Act will apply. Therefore, according to Mr Nankani, the time for filing the Written Statement must be computed from the date of service of the Writ of Summons — even though, on that date, the Suit was not lodged or filed as a Commercial Suit at all, but was still a regular suit, and there was no limitation that applied to the Defendant for filing a Written Statement.

10. He submits that there can be no “estoppel against a statute” and that the provisions of the Commercial Court Act will relate back to the institution of the Suit.

11. The submission is inherently flawed, apart from demanding of the Court what seems to me to be manifestly unjust.. There was an initial fault on the part of the Plaintiff itself in a wrongly instituting the suit as a Regular Suit. The Registry had to raise an objection to rectify this problem.

12. The initial delay is attributable only to the Plaintiff. It cannot take advantage of this. No Court will permit an injustice to be caused, especially when the party seeking an order is itself found to be in default. This unthinking application of a statute, and more so when it sought to be applied retrospectively to cover up a failure, default or misstep by the Plaintiff, to the very considerable prejudice of the Defendant, is not something that any Court of justice can, should or will ever recognize. I can think of no more unjust or inequitable application than one such as this.

13. It is an equally well settled principle that an act of a Court can prejudice no party. That maxim does not demand further repetition or explanation. And while it is true that there is no estoppel against a statute, there is very much estoppel against a demand for an unjust order.

14. The application, in my view is thoroughly misconceived and possibly even mischievous. It is dismissed.

15. But now that Mr Nankani has chosen to go down this road, he and his clients must be equally mindful of the other provisions of the Commercial Courts Act. By this I mean specifically Section 35 of the CPC as amended by the Commercial Courts Act 2015. This provides for an order of costs at any stage of the proceedings. It lists the aspects of factors to which a Court will have regard in making an order of costs. One of these is whether a party has, to use the words of the statute, “wasted the time of the Court” and filed a vexatious proceeding.

16. Mr Nankani even now does not have the necessary instructions to withdraw, although I have once again asked him if he wishes to do so even at this stage. The hubris of his clients is astonishing and now demands that a very strong signal be sent out to plaintiffs like this. I want to be perfectly plain about one aspect of the matter. The purpose and ambit of the Commercial Courts Act is not anti-defendant. It is not merely intended to put a defendant under a strict time limit for entering a defence. It is intended to ensure that Commercial Suits are disposed of expeditiously. What unfortunately the Commercial Courts Act does not say but must reasonably be held to say, is that there is a corresponding duty and obligation on the part of each plaintiff in a Commercial Suit to act with the utmost dispatch and to adhere to reasonable timelines, even if there is no strict limitation. It simply cannot be that a defendant is disadvantaged by statutory limitation and a plaintiff has no obligation to act promptly and in reasonable time. The Commercial Courts Act no more aids a dilatory defendant than it assists a procrastinating plaintiff.

17. The Interim Application is certainly frivolous, mischievous and vexatious. It is an unconscionable waste of very, very scarce judicial time. It seeks to paper over the Plaintiff's slothful handling of its filing. Worse, it demands an order, ostensibly under a statute, that is manifestly unjust. What Mr Nankani's submission amounts to is precisely this: that it matters not a whit that if the result is unjust, so long as the cold, hard letter of the statute is applied ruthlessly. In other words, implicit in his submission is the assertion that if the statute is antithetical to justice, so be it. I cannot and will not accept that.

18. No statute will be read by a court, especially not a court of equity, to yield an unjust result. I am emphatically not extending limitation. I cannot; that much is clear. But crucial to every question of limitation is a reckoning of the starting point of limitation, i.e., when time begins to run. What Mr Nankani says is that *now* that the suit is a commercial suit, although it was not instituted as such, and did not get registered as such for nearly a full year after its institution, I must force this Defendant to reckon limitation from a date when the suit was still only a regular suit without limitation being applicable to the filing of Written Statements. In a case such as this, when a suit is initially instituted as a regular suit and not a commercial suit, there is no statutory limitation that runs against a defendant. The Commercial Courts Act does not apply to a regular suit. It only begins to apply from the date when the suit is registered as a commercial suit in the commercial division. Consequently, if the Writ of Summons is served when the suit is still a regular suit, limitation cannot begin to run. It runs, as a matter of law under the Commercial Courts Act, only when the Commercial Courts Act begins to apply to it. This hardly needed re-stating. It seems to me to be obvious and self-evident. Consider the consequences of what Mr Nankani commends. In a given case, years after institution of the suit as a regular suit, a plaintiff may seek, or the court may order, or the law may require, the suit to be taken to the Commercial Division. If Mr Nankani's construct is to be accepted, then that would mean that every single Written Statement already filed while the suit was a regular suit but filed more than 120 days after the service of the writ of summons must necessarily be dismissed. This, Mr Nankani's submission implies, is a 'fair', 'just' and 'reasonable' reading of the Commercial Courts Act. It is not.

19. Because this is clearly a vexatious and mischievous proceeding that has unnecessarily wasted the Court's time, I can think of no reason to withhold an order of costs against the Plaintiffs. The quantum of costs cannot be trivial. Amended Section 35 clearly intends the power of ordering costs to be used as a deterrent to prevent parties from making such frivolous applications. It would be meaningless to order a paltry amount. Plaintiffs such as this one will understand that Courts are not playgrounds, and litigation is not a pastime.

20. There will, therefore, be an order of costs against the Plaintiff and in favour of the Defendant to be paid within two weeks from today in the amount of Rs.25 lakhs. If not paid in that time, the costs will carry interest at 9% per annum, and the Defendant is entitled to put this order into execution against the Plaintiff for recovery of these costs.

21. The Interim Application is dismissed with costs in these terms.

22. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)