

16th March, 2021

SUSPENSION OF LIMITATION PERIOD DURING PANDEMIC - SIDDHA REAL ESTATE CASE

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IA No. GA 2 of 2020 In CS 245 of 2019 before the Hon'ble Calcutta High Court on 24th December 2020. A copy of the judgment is annexed hereto at page 3 to 10.

1. Brief Facts

- 1.1 The Suit was filed under the Commercial division on 15th November 2019. Summons was served on the defendant on 2nd December 2019. The 30 days of filing written statement expired on 2nd January 2020. The extra 90 days period runs till 31st March 2020.
- 1.2 The Application for extension of time was filed by the defendant on 5th February 2020 seeking 8 weeks time for preparing and filing the written statement.
- 1.3 The defendant relied on two aspects of law to defend his case:
 - 1.3.1 Firstly, the amendment made to Order VIII Rule 1 of Code of Civil Procedure (CPC) after the Commercial Courts Act, 2015 came into force and provided an additional 90 days time for filing the written statement.
 - 1.3.2 Secondly, on the Supreme Court order on 23rd March 2020, in **Suo Motu Writ Petition (Civil) No.(s)3/2020** titled as **In re: Cognizance for Extension of Limitation (for short: "Order dated 23rd March 2020")** where it was held that *"Considering the Covid-19 pandemic situation, the period of limitation prescribed under general as well as the special laws stands extended with effect from 15th March 2020 till further orders."* A copy of the judgment is annexed hereto at page 11.

2. Issues

- 2.1 Whether the initial period of 30 days is the prescribed period for the purpose of limitation?
- 2.2 Whether the defendant can take refuge under the order of 23rd March 2020 passed by Supreme Court.

3. Analysis of the Orders of the Supreme Court in In re: Cognizance for Extension of Limitation

- 3.1 The Hon'ble Calcutta High Court considered the above issues in the light of COVID-19 and took note of Supreme Court's Order dated 23.03.2020. The Hon'ble Supreme Court realized the difficulty faced by the litigants while filing, appearing, etc. due to the COVID-19 outbreak across the world and decided to extend the period of limitation.
- 3.2 In the present case in hand, the Hon'ble Calcutta High Court first analysed the Order dated 23rd March 2020 and subsequent orders in the same case over the same issue i.e. extension of period of limitation during COVID-19 and related doubts and clarifications.
- 3.3 On 6th May 2020 in **In re: Cognizance for extension of limitation, (2020) 9 SCC 468**, the Hon'ble Supreme Court held that the Order dated 23rd March 2020 shall also be applicable to all the period of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138, Negotiable Instruments Act, 1881. A copy of the judgment is annexed hereto at page 12 to 13.
- 3.4 Later **In Re: Cognizance for extension of limitation**, a further Order was passed by the Hon'ble Supreme Court on 10th July 2020, clarifying few points wherein it opined that: A copy of the judgment is annexed hereto at page 14 to 16.
 - 3.4.1 The two orders of the Supreme Court dated 23rd March 2020 and 6th May 2020 shall apply to the following provisions of law under different statutes.
 - 3.4.2 Section 29-A of the Arbitration & Conciliation Act, 1996 which fixes a time within which an arbitral award shall be made was extended.
 - 3.4.3 Section 23(4) of the Arbitration Act, 1996 which mentions six months as the time period for completion of a statement of claim and defence was also extended.

3.4.4 Section 12-A of the Commercial Courts Act, 2015, which deals with completing the process of compulsory pre-litigation mediation and settlement within the prescribed period. This time period is extended till the lockdown subsists along with 45 extra days provided for completing the process.

3.4.5 Regarding the period of validity of a cheque, The Reserve Bank of India under Section 35-A of the Banking Regulation Act, 1949 prescribes the time period for its validity. The Court felt that it is not in a position to interfere with the period prescribed by the RBI as extending such period might hinder the entire banking system.

3.4.6 In the recent Order of Supreme Court in *SS Group Pvt. Ltd vs. Aaditiya J. Garg, Civil appeal No. 4085 of 2020*, dated 17th December 2020, it was held that the Order dated 23rd March 2020 shall also be applicable to Section 38 of the Consumer Protection Act, 2019. A copy of the judgment is annexed hereto at page 17 to 20.

4. Application of the Supreme Court Orders in the present case

4.1 While coming to decision in the present case, the Hon'ble Calcutta High Court elaborately discussed upon, Firstly the interpretation of Order VIII Rule 1, CPC pursuant to the Commercial Courts Act, 2015, and secondly, the interpretation of Supreme Court order dated 23rd March 2020.

4.2 The new Proviso added to Order VIII Rule 1, with The Commercial Courts Act 2015, states :

“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”.

4.3 After interpreting the above, the Hon'ble Calcutta High Court held that the additional period, which is beyond the period of initial 30 days, is not available as a right to the defendant. This is a discretionary right of the court, which must be based upon correct reasoning and excuses, whether to allow the defendant to file the written statement after the expiry of the initial 30 days.

4.4 The use of the “date specified by the court, for reasons to be recorded in writing” clearly indicates that it is upon the court whether it will be justified to allow the defendant's application for condonation of delay in filing a written statement. The defendant cannot say that he is at leverage to

delay the legal process and take benefit of an additional 90 days period over his own faults.

4.5 While analyzing the second issue, the Hon'ble Calcutta High Court observed that the Order dated 23rd March 2020 has to be read with the Supreme Court's order dated 18th September 2020, in *Sagufa Ahmed & Ors. v. Upper Assam Plywood Products Pvt. Ltd. & ors.*, Civil Appeal Nos. 3007-3008 of 2020 (for short “**Sagufa Ahmed Case**”) to be able to understand the clear interpretation of the “period of limitation extended” by the Supreme Court while considering the struggles and inconvenience faced by the litigants in appearances and submissions before the court all over India due to Covid-19 pandemic.

4.6 The ambiguity that aroused was that the period that has been extended is the period of limitation or the prescribed period. Clarifying the same, the Calcutta High Court held that the order dated 18th September 2020 passed by the Supreme Court in *Sagufa Ahmed Case* provided that the extension given was only confined to the prescribed period of limitation and cannot be applied upon period beyond the prescribed period which is only allowed at the discretion of the court. Having said that, it can be undisputedly implied that the Supreme Court order dated 23rd March 2020 is applied only on the initial period of 30 days under Order VII Rule 1, CPC and not on an additional 90 days period.

4.7 Therefore, the defendant cannot take benefit of the Supreme Court's Order dated 23rd March 2020. As the application was filed beyond the prescribed period of 30 days, the defendant can't take recourse of his own wrong. As mentioned in para 19 of the Supreme Court's Order of 18th September, The Apex court relied on the Latin maxim, “*Vigilantibus Non Dormientibus Jura Subveniunt*”, which means that the law will assist only those who are vigilant about their rights and not those who sleep over them. The Calcutta High Court also followed the same principle in the present case.

4.8 After thoroughly discussing both the point of issues above, the Calcutta High Court concluded that defendant's appeal stands dismissed as it neither stood on point of Supreme Court's order dated 23rd March 2020 and nor on Amended Order VIII Rule 1, CPC.

ORDER SHEET

IA No. GA 2 of 2020

In

CS 245 of 2019

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SIDDHA REAL ESTATE DEVELOPMENT PRIVATE LIMITED
Versus
GIRDHAR FISCAL SERVICES PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 24th December, 2020.

[Via Video Conference]

Appearance:

Mr. Meghajit Mukherjee, Adv.

Mr. Ramendu Agarwal, Adv.

Ms. Priyanka Sharma, Adv.

... for the plaintiff/respondent

Mr. Zeeshan Haque, Adv.

Mr. Saket Chaudhary, Adv.

... for the defendant/petitioner

The Court : This application is for extension of time to file the written statement affirmed on behalf of the defendant on 22nd June, 2020.

The dates relevant for the purposes of this application are as follows :

- (i) The suit was filed under the Commercial Division on 15th November, 2019.
- (ii) The writ of summons was served on 2nd December, 2019.

- (iii) The 30 days expired on 2nd January, 2020.
- (iv) The 120 days time for filing the written statement under the amendment made to Order VIII Rule 1 of The Code of Civil Procedure after coming into force of The Commercial Courts Act, 2015, ended on 31st March, 2020.
- (v) The application for extension of time was filed by the defendant before the Master on 5th February, 2020 seeking 8 weeks time for preparing and filing the written statement.

Mr. Zeeshan Haque, learned counsel appearing for the applicant/defendant relies on an Order passed by the Supreme Court on 23rd March, 2020 in which the difficulties faced by litigants by reason of the pandemic were taken into account and the period of limitation prescribed under the general as well as the special laws was extended with effect from 15th March, 2020 till further orders. Counsel relies on a recent order of the Supreme Court in Civil Appeal No. 4085 of 2020 dated 17th December, 2020 which reiterates that the period of limitation for filing the written statement which had expired on 12th August, 2020 in the facts of that particular case stands extended by reason of the order of 23rd March, 2020 passed by the Supreme Court. Counsel places relevant paragraphs from the application which show that the defendant was unable to take steps for filing the written

statement on and from 25th March, 2020 from which date the country went into lockdown due to the outbreak of the pandemic. Counsel submits that there has been no laches on the part of the defendant since the defendant applied before the learned Master of this Court for appropriate orders.

Mr. Meghajit Mukherjee, learned counsel appearing for the plaintiff opposes this application on the amendment brought about to Order VIII Rule 1 of The C.P.C. pursuant to The Commercial Courts Act, 2015 and submits that the first step taken by the defendant for filing of the written statement was after the prescribed period of limitation of 30 days had expired on 2nd January, 2020. Counsel relies on an order of the Supreme Court in Civil Appeal 3007-3008 of 2020 dated 18th September, 2020 which drew a distinction between “period of limitation” and “the period upto which delay can be condoned in exercise of discretion conferred by the statute”. Counsel points to the prayer of the defendant for filing of its written statement within 8 weeks in the application made before the Master on 5th February, 2020.

Upon hearing learned counsel appearing for the parties, Order VIII Rule 1 of The Code of Civil Procedure is required to be set out together with the Amendment to the Section pursuant to The Commercial Courts Act, 2015.

Order VIII

[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 same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]

****[Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes]***

As per S.16 of Act 4 of 2016, in its application to any suit in respect of a commercial dispute of a Specific Value, in Order VIII, in Rule 1, the proviso, the following proviso shall be substituted, namely :-

“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” . – [Vide Act 4 of 2016, S. 16 and Sch. (w.r.e.f. 23-10-2015)]

In order to ascertain if the defendant can take recourse to the Supreme Court Order of 23rd March, 2020 by which the limitation period in a large number of actions was extended with effect from 15th March, 2020 till further orders, the said order has to be read in conjunction with the later order of the Supreme Court of 18th September, 2020. Paragraph 19 of the order of 18th September, 2020 clarifies the earlier order of 23rd March, 2020 in the following manner :

19. But we do not think that the appellants can take refuge under the above order. **What was extended by the above order of this Court was only “the period of limitation” and not the period upto which delay can be condoned in exercise of discretion conferred by the statute.** The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceeding within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is *Vigilantibus Non Dormientibus Jura Subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

This position was reiterated in paragraph 23 of the said order :

23. Therefore, the expression “prescribed period” appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the **prescribed period**, during which the Court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be “prescribed period”.

(The emphasis is in the paragraphs extracted)

The above observation of the Supreme Court has to be read in the background of the Amendment to Order VIII Rule 1 in matters filed under The Commercial Courts Act, 2015. The Amendment would indicate that the prescribed period of limitation is the initial period of 30 days as provided under Order VIII Rule 1.

However, if a defendant fails to file the written statement within the said prescribed period of 30 days, an additional period may be allowed to the defendant for filing of the written statement but which would not extend beyond 120 days from the date of service of summons. The additional period beyond the prescribed period of 30 days can only be allowed upon the Court recording reason for such and on payment of costs as the Court deems fit. The words used in the amendment are clear and unambiguous and to the effect that a defendant in a matter covered by The Commercial Courts Act, 2015 will not be permitted to file its written statement beyond 120 days.

Two questions arise from this construction. First, whether the initial period of 30 days is the prescribed period for the purposes of limitation and second, whether the defendant can take refuge under the order of 23rd March, 2020 passed by the Supreme Court. With regard to the first question, the words of the amendment make it clear that the additional period allowed to a defendant comes into play only after the defendant has failed to file its written statement within the prescribed period under Order VIII Rule 1 which is 30 days. Hence, the 90 days additional window following the prescribed period is the additional period and not the prescribed period of limitation under Order VIII Rule 1.

With regard to the second question, the order of 23rd March, 2020 has to be read with the order of 18th September, 2020, for understanding the limit of the leeway granted by the Supreme Court in view of the difficulties faced by litigants across the country on and from 15th March, 2020. Paragraph

19 of the later order clarified the earlier order of the Supreme Court and the words used therein make it clear that the extension given was only confined to the prescribed period of limitation and cannot be construed to mean the period beyond the prescribed period which allows a Court to exercise its discretion on whether to allow or refuse the period in addition to the prescribed period. This Court is therefore of the view that the order of the Supreme Court dated 23rd March, 2020 would apply only to the first 30 days for filing written statement under Order VIII Rule 1 of The CPC and not to the additional 90 days which follows the prescribed period for matters covered by the 2015 Act. Besides the orders of the Supreme Court should be seen in their specific factual context and that the orders were passed in exercise of the power under Article 142 of The Constitution of India. The order dated 18th September, 2020 also restricts the window to vigilant litigants. In this case the application was filed beyond the prescribed period of 30 days.

The other issue is whether the defendant showed promptness in pursuing its right of filing the written statement. The prescribed period of 30 days ended on 2nd January, 2020 and the additional 90 days (120 days under the Amendment) ended on 31st March, 2020. The application was filed by the defendant for extension of time on 5th February, 2020 seeking a further period of eight weeks for filing of its written statement thereby extending the time till 5th April, 2020. The prayer made therefore is clearly outside even the additional period of 90 days as prescribed by the Amendment. It should also be noted that paragraph 16 of the application filed by the defendant states that

judicial functions and listing of urgent matters started in phases on and from June, 2020 and matters taken up in the regular course in this Court resumed only on and from 7th December, 2020. This is clearly an incorrect statement since The High Court at Calcutta commenced its judicial business intermittently from April, 2020 and in right earnest from June, 2020 which continues as on date. The defendant therefore cannot take recourse to this ground at all.

In view of the above reasons, this Court does not find any ground either provided under Order VIII Rule 1 or the amendment thereto or by the orders of the Supreme Court for allowing the application for extension of time to file the written statement.

G.A. No. 2 of 2020 is accordingly dismissed. There shall be no order as to costs.

(MOUSHUMI BHATTACHARYA, J.)

RS/TO

2020 SCC OnLine SC 343

Extended in *Cognizance of Extension of Limitation, In Re, (2020) 9 SCC 468*

In the Supreme Court of India
Record of Proceedings

(BEFORE SHARAD ARVIND BOBDE, C.J. AND L. NAGESWARA RAO AND SURYA KANT, JJ.)

In Re: Cognizance for Extension of Limitation ... Petitioner(s);
Suo Motu Writ Petition (Civil) No(S).3/2020
Decided on March 23, 2020

Counsel Present

By Courts Motion

Mr. Tushar Mehta, SG1
Ms. Swati Ghildiyal, Adv.
Mr. Ankur Talwar, Adv.
Mr. G.S. Makkar, Adv.
Mr. Raj Bahadur, Adv.
Mr. B.V. Balaram Das, AOR

ORDER

This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings 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.

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2020 SCC OnLine SC 434

Extended in *Cognizance of Extension of Limitation, In Re, (2020) 9 SCC 468*In the Supreme Court of India
(BEFORE DEEPAK GUPTA, C.J. AND HRISHIKESH ROY, J.)

In re: Cognizance for Extension of Limitation

Suo Moto Writ (Civil) No. 3 of 2020 with IA No. 48411/2020 - Appropriate Orders/Directions, IA No. 48375/2020 - Clarification/Direction, IA No. 48511/2020 - Clarification/Direction, IA No. 48461/2020 - Clarification/Direction, IA No. 48374/2020 - Intervention Application, IA No. 48416/2020 - Intervention Application and IA No. 48408/2020 - Intervention Application
Decided on May 6, 2020

Advocates who appeared in this case :

Counsel for the parties: Mr. K.K. Venugopal, Ld. AG, Mr. Tushar Mehta, Ld. SG, Mr. B.V. Balram Das, AOR, Mr. Dushyant Dave, Sr. Adv., Mr. Sameer Pandit, Adv., Mr. Nikhil Ranjan, Adv., Mr. Utkarsh Kulvi, Adv., Mr. Pranaya Goyal, AOR, Ms. Meenakshi Arora, Sr. Adv., Mr. Ankur Mahindro, Adv., Ms. Anannya Ghosh, AOR, Mr. Arjun Garg, AOR, Mr. Divyakant Lahoti, AOR, Mr. Parikshit Ahuja, Adv., Ms. Praveena Bisht, Adv., Mr. Kartik Lahoti, Adv., Ms. Madhur Jhavar, Adv., Ms. Vindya Mehra, Adv., Mr. Mayank Kshirsagar, AOR, Mr. Sahil Mongia, Adv., Mr. Aniruddha P. Mayee, AOR and Mr. Narayan Marathe, Applicant-in-Person

UPON hearing the counsel the Court made the following

ORDER

IA No. 48411/2020 - FOR DIRECTIONS

By way of filing this application for directions, the applicant has made the following prayer :

"To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) initiation of proceedings under section 138 of the Negotiable Instruments Act, 1881;"

In view of this Court's earlier order dated 23.03.2020 passed in *Suo Motu Writ Petition (Civil) No. 3/2020* and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.

In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

In view of the above, the instant interlocutory application is disposed of.

IA No. 48375/2020 - Clarification/Direction and IA No. 48511/2020 - Clarification/Direction and IA No. 48461/2020 - Clarification/Direction and IA No. 48374/2020 - Intervention Application and IA No. 48416/2020 - Intervention Application and IA No. 48408/2020 - Intervention Application

Issue notice.

Waive service on behalf of the respondent - Union of India since Mr. K. K. Venugopal, learned Attorney General for India and Mr. Tushar Mehta, learned Solicitor General, appear on its behalf. Let notice be issued to other respondents.

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3-Judge
Bench
2020
July 10

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SUPREME COURT CASES

(2020) 9 SCC

(2020) 9 Supreme Court Cases 468
(Record of Proceedings)

(BEFORE S.A. BOBDE, C.J. AND R. SUBHASH REDDY AND A.S. BOPANNA, JJ.)

COGNIZANCE FOR EXTENSION OF
LIMITATION, IN RE

.. Petitioner.

Suo Motu Writ Petition (C) No. 3 of 2020 with IAs
Nos. 48374-375, 48408, 48416, 48461, 48671-673, 48574,
49221, 50977, 50985, 51078, 51082, 55276-277, 58910,
58914 and 60198 of 2020, decided on July 10, 2020

A. Arbitration and Conciliation Act, 1996 — Ss. 29-A and 23(4) — Extension of periods of fixed time to do particular acts under — Held, the same shall stand extended w.e.f. 15-3-2020 in terms of orders dated 23-3-2020 and 6-5-2020 (Paras 3 to 5)

B. Practice and Procedure — Commercial Courts Act, 2015/Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 — S. 12-A — Time prescribed under for completing process of compulsory pre-litigation mediation and settlement — Said time shall stand extended from time when COVID-19 Lockdown is lifted plus 45 days thereafter — However, if period of Lockdown plus 45 days has expired, no further period shall be liable to be excluded (Para 7)

C. Practice and Procedure — Notice/Summons/Knowledge of Proceedings — Service of notices, summons and pleadings, etc. rendered impossible during COVID-19 Lockdown because this involves visits to post-offices, courier companies or physical delivery of notices, summons and pleadings — Held, such services of all of the above may be effected by email, fax, commonly used instant messaging services, such as WhatsApp, Telegram, Signal, etc. — If a party intends to effect service by means of said instant messaging services, party must also effect service of same document(s) by email, simultaneously on same date — Civil Procedure Code, 1908, Or. 5 (Para 8)

D. Debt, Financial and Monetary Laws — Banking Regulation Act, 1949 — S. 35-A — Period of validity of cheque — Extension of, due to COVID-19 Lockdown — Said period has not been prescribed by any statute but it is a period prescribed by RBI under S. 35-A of Banking Regulation Act, 1949 — It is not appropriate to interfere with period prescribed by Reserve Bank of India — Entire banking system functions on basis of period so prescribed — Reserve Bank of India may in its discretion, alter such period as it thinks fit (Paras 10 and 11)

Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343;
Cognizance for Extension of Limitation, In re, (2020) 19 SCC 9 : 2020 SCC OnLine SC 434, extended

ND-D/65586/C

Advocates who appeared in this case :

By Court's Motion (Advocate-on-Record);

K.K. Venugopal, Attorney General, Tushar Mehta, Solicitor General, Dushyant Dave (Amicus Curiae) (not joined), C.M. Lall, Shyam Divan, V. Giri, Pravin H. Parekh and Sidharth Luthra, Senior Advocates [Ankur Talwar, Kanu Agrawal,

COGNIZANCE FOR EXTENSION OF LIMITATION, IN RE

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a B.V. Balaram Das (Advocate-on-Record), Divyakant Lahoti (Advocate-on-Record), Parikshit Ahuja, Ms Praveena Bisht, Ms Vindhya Mehra, Ms Madhur Jhavar, Kartik Lahoti, Rahul Maheshwari, Bhanu Pant, Apoorv Kurup, Ms Upama Bhattacharjee, Gurvinder Singh, Gaurav Miglani, Rahul Vidhani, Ms Nancy Roy, Ms Archana Sahadeva (Advocate-on-Record), Sameer Pandit, Nikhil Ranjan, Utkarsh Kulvi, Govind Manoharan, Ms Sarrah Khambati, Pranaya Goyal (Advocate-on-Record), Ramesh Babu M.R., Ms Aruna Mathur (Advocate-on-Record), Avneesh Arputham, Ms Anuradha Arputham, Ms Geetanjali (for M/s Arputham Aruana & Co.), Sameer Parekh, Kshatrshal Raj (for M/s Parekh & Co.) (Advocate-on-Record), Yashvardhan, Apoorv Shukla (Advocate-on-Record), Ms Ishita Farsaiya, Ms Prabhleen Kaur, b Arjun Garg (Advocate-on-Record), Rati Tandon, Ms Anannya Ghosh (Advocate-on-Record), Vivek Narayan Sharma (Advocate-on-Record), Akash Shukla, Sarvam Ritam Khare (Advocate-on-Record), Arvind Kr. Sharma (Advocate-on-Record), A. Lakshminarayanan (Advocate-on-Record), Arshdeep Singh Khurana, Varun K. Chopra, Akshat Gupta, Ms Rajshree Sharma, Gurtejpal Singh, Ayush Luthra, Shivanshu Singh, Mohd. Shakei Naru (for M/s VKC Law Offices) (Advocate-on-Record), Charanpal Singh Bagri, Anilendra Pandey (Advocate-on-Record), c Abhimanyu Tewari (Advocate-on-Record), Ms Binu Tamta (Advocate-on-Record), V.N. Raghupathy (Advocate-on-Record), S. Thananjayan (Advocate-on-Record), Mayank Kshirsagar (Advocate-on-Record), Sahil Mongia, Tushar Singh, Rahul Yadav, Ms Pankhuri and Akhilesh Yadav, Advocates], for the appearing parties.

Chronological list of cases cited

		<i>on page(s)</i>
	1. (2020) 19 SCC 10 : 2020 SCC OnLine SC 343, <i>Cognizance for Extension of Limitation, In re</i>	469f, 469g, 470a
d	2. (2020) 19 SCC 9 : 2020 SCC OnLine SC 434, <i>Cognizance for Extension of Limitation, In re</i>	469f, 469g, 470a

ORDER

1. Parties have prayed to this Court for extending the time where limitation is to expire during the period when there is a lockdown in view of COVID-19 or the time to perform a particular act is to expire during the lockdown.

e IA No. 49221 of 2020 — Section 29-A of the Arbitration and Conciliation Act, 1996

2. Taken on board.

f 3. In Suo Motu Writ Petition (C) No. 3 of 2020, by our orders dated 23-3-2020¹ and 6-5-2020², we ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 shall be extended w.e.f. 15-3-2020 till further orders.

4. The learned Attorney General has sought a minor modification in the aforesaid orders.

g 5. Section 29-A of the Arbitration and Conciliation Act, 1996 does not prescribe a period of limitation but fixes a time to do certain acts i.e. making an arbitral award within a prescribed time. We, accordingly, direct that the aforesaid orders^{1, 2} shall also apply for extension of time-limit for passing arbitral award under Section 29-A of the said Act. Similarly, Section 23(4) of the Arbitration and Conciliation Act, 1996 provides for a time period of 6 months for the completion of the statement of claim and defence. We,

h
1 *Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343
2 *Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 9 : 2020 SCC OnLine SC 434

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SUPREME COURT CASES

(2020) 9 SCC

accordingly, direct that the aforesaid orders^{1, 2} shall also apply for extension of the time-limit prescribed under Section 23(4) of the said Act.

6. The application is disposed of accordingly.

Pre-institution mediation and settlement under Section 12-A of the Commercial Courts Act, 2015

7. Under Section 12-A of the Commercial Courts Act, 2015, time is prescribed for completing the process of compulsory pre-litigation mediation and settlement. The said time is also liable to be extended. We, accordingly, direct that the said time shall stand extended from the time when the lockdown is lifted plus 45 days thereafter. That is to say that if the above period i.e. the period of lockdown plus 45 days has expired, no further period shall be liable to be excluded.

IA No. 48461 of 2020 — Service of all notices, summons and exchange of pleadings

8. Service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings, etc. have not been possible during the period of lockdown because this involves visits to post-offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it appropriate to direct that such services of all the above may be effected by email, fax, commonly used instant messaging services, such as WhatsApp, Telegram, Signal, etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document(s) by email, simultaneously on the same date.

Extension of validity of the Negotiable Instruments Act, 1881 — IAs Nos. 48461 and 48672 of 2020 (IAs Nos. 48671 and 48673 of 2020)

9. IA No. 48671 of 2020 for impleadment is allowed.

10. With reference to the prayer, that the period of validity of a cheque be extended, we find that the said period has not been prescribed by any statute but it is a period prescribed by Reserve Bank of India under Section 35-A of the Banking Regulation Act, 1949. We do not consider it appropriate to interfere with the period prescribed by Reserve Bank of India, particularly, since the entire banking system functions on the basis of the period so prescribed.

11. The Reserve Bank of India may in its discretion, alter such period as it thinks fit. Ordered accordingly.

12. The instant applications are disposed of accordingly.

IAs Nos. 48374 and 48375 of 2020

13. List after six weeks.

¹ *Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343
² *Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 9 : 2020 SCC OnLine SC 434

2020 SCC OnLine SC 1050

In the Supreme Court of India
(BEFORE VINEET SARAN AND S. RAVINDRA BHAT, JJ.)

Civil Appeal No. 4085 of 2020*

SS Group Pvt. Ltd. ... Appellant;

Versus

Aaditiya J. Garg and Another ... Respondents.

Civil Appeal No. 4086 of 2020[±]Civil Appeal No. 4087 of 2020[±]Civil Appeal No. 4088 of 2020[±]Civil Appeal No. 4089 of 2020[±]Civil Appeal No. 4090 of 2020^{*±}Civil Appeal No. 4091 of 2020^{*±}Civil Appeal No. 4092 of 2020^{*±}Civil Appeal No. 4093 of 2020^{*±}

Civil Appeal No. 4085 of 2020, Civil Appeal No. 4086 of 2020, Civil Appeal No. 4087 of 2020, Civil Appeal No. 4088 of 2020, Civil Appeal No. 4089 of 2020, Civil Appeal No. 4090 of 2020, Civil Appeal No. 4091 of 2020, Civil Appeal No. 4092 of 2020 and Civil Appeal No. 4093 of 2020

Decided on December 17, 2020

ORDER

1. Leave granted.

2. This batch of civil appeals has been filed by the appellant/builder challenging the order dated 07.09.2020 passed by the the National Consumer Disputes Redressal Commission, New Delhi ("the National Commission", for short).

3. The respondents herein had booked the flats with the appellant and since the flats were allegedly not delivered on time, the respondents filed Consumer Complaints before the National Commission claiming refund of money.

4. The notices in each of the complaint petitions were issued by the National Commission in June 2020 and were received by the appellant on 13.07.2020 in each of complaint cases.

5. It is submitted that as per Section 38(2)(a) of the Consumer Protection Act, 2019, 30 days time is provided for filing written statement, which could be extended for a further period of 15 days. In the present matter, the period of 30 days expired on 12.08.2020 and extended period of 15 days expired on 27.08.2020.

6. Admittedly, the written statement/reply was filed by the appellant before the National Commission on 31.08.2020, which filing was beyond the period of 45 days. The National Commission thus declined to take the written statement on record in view of the Constitution Bench decision of this Court in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, (2020) 5 SCC 757, wherein it has been held that the Consumer Court has no power to extend the time for filing the response to the complaint beyond 45 days. Said decision of the National Commission is presently under challenge in these appeals.

7. We have heard Mr. Sanjay K. Shandilya, learned counsel appearing for the appellant and Mr. Naveen Kumar, learned counsel appearing for the respondents on caveat.

8. Learned counsel for the respondents submits that the respondents do not wish to file counter affidavit and, therefore, these appeals be disposed of.

9. With the assistance of the learned counsel for both the sides, we have carefully perused the record.

10. It is true that the decision of the Constitution Bench of this Court in *New India Assurance Co. Ltd.* (supra) clearly provides that no written statement is to be allowed to be filed beyond the period of 45 days as per Section 38 of the Consumer Protection Act, 2019. However, in this context, it is noteworthy to refer to the order dated 23.03.2020 passed by this Court in SMW(C) No. 3 of 2020, titled as "In Re: Cognizance for Extension of Limitation", which reads as under:

"This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings 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 supplied)

11. The above order is still operative and by subsequent orders, the scope has been enlarged so that the said order applies in other proceedings also.

12. In the present matter, it is an admitted fact that the period of limitation of 30 days to file the written statement had expired on 12.08.2020 and the extended period of 15 days expired on 27.08.2020. This period expired when the order dated 23.03.2020 passed by this Court in SMW(C) No. 3 of 2020 was continuing.

13. In view of the aforesaid, in our opinion, the limitation for filing the written statement in the present proceedings before the National Commission would be deemed to have been extended as it is clear from the order dated 23.03.2020 that the extended period of limitation was applicable to all petitions/applications/suits/appeals and all other proceedings. As such, the delay of four days in filing the written statements in the pending proceedings before the National Commission deserves to be allowed, and is accordingly allowed.

14. In the circumstances, we allow these appeals, set-aside the order passed by the National Commission and direct that (i) the written statement filed by the appellant shall be taken on record; and, (ii) the matter shall thereafter be proceeded with expeditiously and in accordance with law.

15. With the aforesaid observations, the appeals are allowed with no order as to costs.

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No. 13636/2020
(Arising out of impugned final judgment and order dated 07-09-2020 in IA No.
5276/2020 passed by the National Consumers Disputes Redressal Commission, New
Delhi)

SS Group Pvt. Ltd ... Petitioner(s)

Versus

Aaditiya J. Garg and Another ... Respondent(s)

(FOR ADMISSION and I.R.; and, IA No. 117677/2020 - FOR EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

WITH

SLP(C) No. 14309/2020 (XVII-A)

(FOR ADMISSION and I.R.; and, IA No. 122558/2020 - FOR EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 14226/2020 (XVII-A)

(FOR ADMISSION and I.R.; and, IA No. 121584/2020 - FOR EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 14252/2020 (XVII-A)

(FOR ADMISSION and I.R.; and, IA No. 121961/2020 - FOR EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 14228/2020 (XVII-A)

(FOR ADMISSION and I.R.; and, IA No. 121606/2020 - FOR EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 14716/2020 (XVII-A)

(FOR ADMISSION and I.R.; and, IA No. 124978/2020 - FOR EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 14213/2020 (XVII-A)

(FOR ADMISSION and I.R.; and, IA No. 121498/2020 - FOR EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 14233/2020 (XVII-A)

(FOR ADMISSION and I.R.; and, IA No. 121662/2020 - FOR EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

SLP (C) No. 14181/2020 (XVII-A)

(FOR ADMISSION and I.R.; I.A. No. 121112/2020 - FOR EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT)

Date: 17-12-2020 These petitions were called on for hearing today.

(BEFORE VINEET SARAN AND S. RAVINDRA BHAT, JJ.)

For Petitioner(s) Mr. Sanjay K. Shandilya, Adv.

Mr. Apoorva Agarwal, Adv.

Mr. Abhishek, Adv.

Mr. Mushtaq Ahmad, AOR

For Respondent(s) Mr. Naveen Kumar, Adv. (On Caveat)

UPON hearing the counsel the Court made the following

ORDER

16. Leave granted.

17. The appeals are allowed, in terms of the Signed Order.

18. Pending applications, if any, also stand disposed of.

* (Arising out of SLP (C) No. 13636 of 2020)

† (Arising out of SLP (C) No. 14309 of 2020)

‡ (Arising out of SLP (C) No. 14226 of 2020)

[¶] (Arising out of SLP (C) No. 14252 of 2020)

[§] (Arising out of SLP (C) No. 14228 of 2020)

*† (Arising out of SLP (C) No. 14716 of 2020)

*‡ (Arising out of SLP (C) No. 14213 of 2020)

*[¶] (Arising out of SLP (C) No. 14233 of 2020)

*[§] (Arising out of SLP (C) No. 14181 of 2020)

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