

Deepak Chhabria Vs Supreme Indosaigon Associates

Court: Bombay High Court

Date of Decision: Dec. 8, 2014

Acts Referred: Constitution of India, 1950 Article 227

Citation: (2015) 1 ALLMR 30 : (2015) 4 BomCR 79 : (2015) 1 MhLj 896

Hon'ble Judges: R.M. Savant, J

Bench: Single Bench

Advocate: Y.S. Jahagirdar, Senior Advocate, Niranjana Lapashiya and Nikita Gada i/b Niranjana and Co, Advocate for the Appellant; P.K. Dhakephalkar, Senior Advocate, Ashwin Ankad and Rakesh Pandey i/b Ashwin Ankhad Associates, Advocate for the Respondent

Judgement

R.M. Savant, J.

Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The above Writ Petitions filed under Article 227 of the Constitution of India involve a common challenge i.e. the challenge to the order dated

26-9-2014 passed by the Learned Judge of the City Civil Court by which order, the Chamber Summonses filed by the Petitioners herein for

directing the Defendant No.1 to file the Written Statements affirmed on 9-1-2007 and the Written Statements dated 26-3-2014 filed in each of the

Suits in question, be rejected and returned to the Defendant No.1 is taken exception to by way of the above Petitions.

3. Shorn of unnecessary details a few facts can be stated thus:

The Petitioners herein are the original Plaintiffs who have filed the Suits in question being Suit Nos.515 of 2006, 517 of 2006 and 553 of 2006,

against the Defendants i.e. the Respondents herein for compliance of the obligations of the Respondents under the Maharashtra Ownership of Flats

Act, 1963 (for short MOFA). In the said Suits, an interim order is operating against the Defendant No.1 whereby the Defendant No.1 has been

injunctioned from dealing with the suit property in question. In view of the fact that the Respondents/Defendant No.1 had not filed their Written

Statements, a No WS order came to be passed against the Defendant No.1 on 9-1-2007. Upon this, the Defendant No.1 decided to file

applications by way of Notices of Motion in the three Suits for setting aside the No WS order dated 9-1-2007 and for the Written Statements

being taken on record. In the affidavit in support of the Notices of Motion, the ground made out was that though the Written Statements of the

Defendant No.1 were ready and affirmed on 9-1-2007, however for the reasons beyond its control it were unable to file the same in the Court.

The Trial Court i.e. the Learned Judge of the City Civil Court considered the said Notices of Motion and by order dated 15-1-2011 rejected the

same. It seems that the Defendant No.1 thereafter let the matter rest for about three years and challenged the said order dated 15-1-2011 by way

of Writ Petitions in this Court, being Writ Petition Nos.2561 of 2014, 2605 of 2014 and 2551 of 2014.

4. In the said Writ Petitions, apart from the fact that the Written Statements were affirmed on 9-1-2007, it was also pleaded that in view of the

accident which the Joshi family had met with in London that steps could not be taken to file the said Notices of Motion and thereby get the No WS

order set aside and in turn file the Written Statements. This Court by order dated 12-3-2014 set aside the order dated 15-1-2011 passed by the

Learned Judge of the City Civil Court rejecting the Notices of Motion. This Court whilst setting aside the said order adverted to the fact that

though the accident met by the Joshi family was not a ground on which the Notices of Motion filed for setting aside No WS order were founded

upon, however the fact that the said Joshi Family met with an accident could not be lost sight of. This Court also referred to the case of the

Petitioner therein i.e. the Defendant No.1 in the Suit that the Written Statements were filed and affirmed and ready for filing on 9-1-2007 but were

for some inexplicable reasons not filed, as indicated above this Court by order dated 12-3-2014, allowed the Notices of Motion and thereby set

aside the No WS order and permitted the Defendant No.1 to file its Written Statement by imposing costs of Rs.10,000/- in each of the Suits. In

the operative part of the order dated 12-3-2014 this Court permitted the Defendant No.1 to file its Written Statement on or before 27-3-2014.

This is in so far as the setting aside of the No WS order and the filing of the Written Statements by the Defendants is concerned.

5. It seems that thereafter the Written Statements were sworn on 26-3-2014 by the Defendant No.1. It is on the basis of the said Written

Statements i.e. the pleadings on record that the Trial Court framed issues in the said three suits on 10-6-2014. The Plaintiffs were also paid costs

of Rs.10,000/- which was directed by the said order dated 12-3-2014 which the Plaintiffs accepted. It seems that the Plaintiffs thereafter sought

time on two dates for filing their affidavit in examination-in-chief in each of the three Suits and after seeking time on 8-8-2014 filed the instant three

Chamber Summonses for the relief that the Written Statements which have been affirmed on 26-3-2014 should be taken off from record and the

Defendant No.1 should be directed to file the Written Statements dated 9-1-2007. The said 3 Chamber Summonses were opposed to on behalf

of the Defendant No.1. The Trial Court considered the said applications i.e. the Chamber Summonses and by the impugned order dated 26-9-

2014 has rejected the said Chamber Summonses. The gist of the reasoning of the Trial Court is that this Court had granted time till 27-3-2014 to

file the Written Statements and the same would not imply that the Written Statements dated 9-1-2007 which the Defendant No.1 had purportedly

affirmed were required to be filed. The Trial Court further held that it is not a case where the Written Statements dated 9-1-2007 were tendered

and the same were not taken on record and thereafter the applications for taking them on record were filed. The Trial Court was of the view that

the applications were for setting aside the No WS order and for taking the Written Statements on record and therefore the Defendant No.1 was

entitled to file the Written Statements but that was to be done before 27-3-2014. As indicated above, it is the said order dated 26-9-2014 passed

by the Trial Court which is taken exception to by way of the above Petitions.

6. Heard the Learned Senior Counsel for the parties.

7. The learned Senior Counsel Shri Y. S. Jahagirdar appearing on behalf of the Petitioners would contend that the Notices of Motion were

allowed in the earlier round having regard to the fact that the Written Statements on behalf of the Respondents were affirmed and ready on 9-1-

2007 but were not filed. The Learned Senior Counsel would contend that the said ground is virtually replete in the affidavit in support of the

Notices of Motion, the Writ Petitions filed by the Defendant No.1 in the earlier round and therefore the Defendant No.1 was not entitled to file the

Written Statements different than the ones affirmed on 9-1-2007. The Learned Senior Counsel would contend that the Written Statements

affirmed on 9-1-2007 were different in their content than the Written Statements which have been affirmed on 26-3-2014 and the same therefore

acts to the prejudice of the Plaintiffs as certain admissions are now sought to be taken away by the Written Statements sworn on 26-3-2014.

Hence it is the submission of the learned Senior Counsel for the Petitioners that the Written Statements affirmed on 26-3-2014 should be rejected

and the Defendant No.1 should be directed to file the Written Statements affirmed on 9-1-2007.

8. Per contra the Learned Senior Counsel Shri P.K. Dhakephalkar appearing on behalf of the Respondent No.1 would support the impugned

order. The Learned Senior Counsel would contend that the ground of the Written Statements being affirmed on 9-1-2007 is one of the grounds

inter alia on the basis of which the setting aside of the No WS order and for the Defendant No.1 being permitted to file their Written Statements

was sought. The Learned Senior Counsel would contend that as rightly observed by the Trial Court the Written Statements dated 9-1-2007 were

never tendered in the Trial Court and therefore since this Court had granted time till 27-3-2014, the Defendant No.1 was well within its right to file

the Written Statements which were sworn on 26-3-2014. The Learned Counsel would contend that in so far as the Defendant No.1 is concerned,

it is entitled to take contradictory pleas and the averments in the Written Statements have therefore to be construed in a different manner than the

averments in a plaint.

9. Having heard the Learned Senior Counsel for the parties I have considered the rival contentions. The question that is posed in the above

Petitions is whether the Defendant No.1 is entitled to file different Written Statements than ones that were affirmed on 9-1-2007 or that the

Defendant No.1 has to only file the Written Statements affirmed on 9-1-2007, in the said three Suits. No doubt in the affidavit in support of the

Notices of Motion that were filed for setting aside the No WS order, the foundation was that the Written Statements were duly affirmed on 9-1-

2007 but for some inexplicable reasons remained to be filed. However, in the earlier round what is required to be noted that apart from the said

fact, the Learned Counsel who had appeared for the Defendant No.1 in the earlier round had contended that the Joshi family had met with a

serious accident in London on account of which steps could not be taken for filing of the Notices of Motion and thereby seek setting aside of the

No WS order whereby the Defendant No.1 would be entitled to file its Written Statements. The fact that the Written Statements were affirmed on

9-1-2007 is a fact which demonstrates that the Defendant No.1 was diligent and had kept the Written Statements ready but could not file the

same. Obviously the said fact being pressed into service by the Defendant No.1, this Court had given due weightage to the same. This Court whilst

allowing the Notices of Motion in the earlier round had therefore adverted to the aforesaid facts, however, whilst setting aside the order, this Court

had granted time up to 27-3-2014 to the Defendant No.1 to file its Written Statements. It is also required to be borne in mind that the Written

Statements affirmed on 9-1-2007 were not placed on record in any manner at the time when the Notices of Motion were considered or even

thereafter. An order setting aside the No WS order and permitting the Defendant No.1 to file its Written Statements cannot be construed in the

instant case to mean that the Written Statements which were permitted to file were only the ones dated 9-1-2007. In my view, giving such an

interpretation to the order dated 12-3-2014 passed in the earlier round would be like putting restrictions on the Defendant No.1 as regards its

defence, more so when it was entitled to file its Written Statements within the outer limit of 27-3-2014, either the Written Statements dated 9-1-

2007 if it so chooses or any other Written Statements. The contention urged on behalf of the Petitioners herein that in view of the Written

Statements which have been affirmed on 26-3-2014 certain admissions which were purportedly appearing in the Written Statements affirmed on

9-1-2007 are taken away, cannot be a consideration for directing the Defendant No.1 that the Written Statements dated 9-1-2007 can only be

filed. In my view, the Trial Court has approached the matter from the correct perspective by observing that in terms of the order dated 12-3-2014

it is not as if the Written Statements dated 9-1-2007 were only to be filed.

10. The matter has also to be viewed from another angle. As indicated above, the Defendant No.1 has remitted costs of Rs.10,000/- to the

Plaintiffs in each of the said Suits in terms of the said order dated 12-3-2014. The Plaintiffs have accordingly accepted the said costs. The Written

Statements were thereafter tendered and it is on the basis of the Written Statements which were filed, that issues were framed, having regard to the

pleadings on record. The Plaintiffs do not seem to have objected to the Written Statements which were sworn on 26-3-2014 being filed, as issues

were also framed thereafter, in fact the Plaintiffs had sought adjournment on two occasions when it was for them to file their affidavit of evidence

and it is on the second occasion that the instant Chamber Summonses came to be filed. In my view therefore, the instant Chamber Summonses are

an after thought and have been possibly filed in view of the fact that the Defendant No.1 had sought amendment in its Written Statement in the

other Suit being No.516 of 2006 which is identical to the Suits involved in the above Petitions. Hence on the said ground also the impugned order

passed by the Trial Court rejecting the Chamber Summonses can be sustained. In that view of the matter, no case for interference in the Writ

Jurisdiction of this Court is made out. The Writ Petitions are accordingly dismissed. Rule discharged, with parties to bear their respective costs.

11. At this stage, the Learned Counsel for the Petitioners prays for stay of the instant order. In view of the fact that this Court has directed the

Suits to be disposed of by 31st December 2014, the said prayer is rejected.