



\$~10 (2022 Cause List)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 08th March, 2022

+ CM(M) 130/2022 & CM APPL. 6448/2022

SUNIL KUMAR GUPTA

..... Petitioner

Through: Mr. Prashant Kumar Mittal,
Advocate (Mobile No.
9811088853).

versus

VATSAL MITTAL

..... Respondents

Through: Mr. Vinay Kumar, Advocate
(Mobile No. 9953587340).

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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The proceedings in the matter have been conducted through video conferencing.

1. The petitioner, who is the defendant in CS (Comm) 276/2020 pending before the District Judge, Commercial Court-01, Shahdara, Karkardooma Court, Delhi, assails an order dated 10.01.2022 by which the Trial Court has taken his written statement off the record on the ground of delay.

2. The plaintiff-respondent filed a suit for recovery of a sum of ₹6,40,801/- alongwith pendente lite and future interest on 22.02.2020. Although there is some controversy with regard to the date of service



of summons, the defendant's own case is that the summons were served on 23.03.2021. The written statement was, however, filed only on 26.08.2021, after lapse of the maximum period contemplated under Order VIII Rule 1 of the Code of Civil Procedure, 1908 ["CPC"], as it applies to commercial courts.

3. The defendant made an application under Order VIII Rule 1 of the CPC for condonation of 35 days' delay in filing of the written statement. The grounds taken were that the parties had been referred to mediation on 23.03.2021, the very date when the summons were served upon him. The parties were referred back to the Court on 19.07.2021. It was also stated that in the course of COVID-19 pandemic, the defendant and his counsel have suffered various medical emergencies due to which the written statement could not be filed.

4. By the impugned order dated 10.01.2022, the Trial Court has negatived these contentions. Before the Trial Court, the defendant relied *inter alia* upon the orders passed by the Supreme Court in *Suo Motu* Writ Petition (Civil) No. 3/2020, whereby the period of limitation for various purposes was extended in the wake of pandemic. The Trial Court, noting the judgments of the Supreme Court and this Court relating to interpretation of Order VIII Rule 1 of the CPC in the context of commercial cases, found that the maximum time for filing of the written statement had lapsed on 22.07.2021. Having regard to the circulars issued by this Court from time to time with regard to the virtual and physical hearings, the Trial Court observed that the defendant could have placed his written statement on record within the



time granted. The medical grounds urged by the defendant and his counsel were also disbelieved. The Trial Court relied upon a judgment of this Court dated 12.08.2021 in CM (M) 429/2021 [*Bharat Kalra vs. Raj Kishan Chabra*], wherein this Court held that the extension of limitation granted by the Supreme Court could not be used to benefit the litigant who was not diligent.

5. Similarly, the Trial Court also relied upon the judgments of this Court in *Rajiv Sarin & Ors. vs. Directorate of Estate & Ors.* [CS (Comm) 12/2021, decided on 25.11.2021] and *HT Media Limited & Anr. vs. Brainlink International, Inc & Anr.* [CS (Comm) 119/2020, decided on 17.12.2021].

6. Having heard learned counsel for the parties, I am of the view that the matter is no longer *res integra*. By a judgment dated 14.02.2022 in Civil Appeal No. 1318/2022 [*Prakash Corporates vs. Dee Vee Projects Limited*], the Supreme Court has held, in the context of a suit filed under the Commercial Courts Act, 2015, that the period of limitation for filing of a written statement stood extended by virtue of the orders of the Supreme Court in *Suo Motu Writ Petition (Civil) No. 3/2020*. The defendant had appeared before the court but filed its written statement belatedly. The Commercial Court in that case had, as in the present case, declined an application under Order VIII Rule 1 of the CPC on the ground that no extension could be granted for filing a written statement, beyond the period of 120 days. The High Court declined to interfere under Article 227 of the Constitution. The Supreme Court reversed this view, and found in favour of the defendant.



7. After noticing the various orders passed by the Court from time to time, as well as the administrative orders passed by the jurisdictional High Court, the Supreme Court noted the consequences of the Covid-19 pandemic, and observed as follows:-

52. When the movements and gatherings of persons were fraught with dangers and when lockdowns became inevitable, the institutions related with the task of administration of justice were also required to respond to the challenges thrown by this pandemic. In this regard, this Court, apart from taking various measures of containment, also took note of the practical difficulties of the litigants and their lawyers; and this led to the suo motu order dated 23.03.2020 in SMWP No. 3 of 2020.

53. In the consciously worded order dated 23.03.2020, this Court, while taking note of the difficulties likely to be faced by the litigants in filing their petitions/applications/suits/appeals/proceedings within the period of limitation, ordered that the period of limitation in all such proceedings, irrespective of the limitation prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15.03.2020 until further orders. This order was passed in exercise of plenary powers of this Court under Article 142 of the Constitution of India, which are complementary to other powers specifically conferred by various statutes. Even if the above referred provisions of CPC had not been stated in specific terms, the general mandate of the order dated 23.03.2020 was to extend the period of limitation provided in any law for the time being in force, irrespective whether the same was condonable or not, w.e.f. 15.03.2020 and until further orders. Noticeably, on 06.05.2020, when special periods of limitation under different enactments like the Act of 1996 were referred to, this Court further ordered that the limitation prescribed thereunder shall stand extended w.e.f. 15.03.2020 until further orders. It was a time when



the country was under the grip of lockdown, and the Court provided that in case 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 lifting of lockdown.

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55. On 08.03.2021, suggestions were made before this Court about lifting of lockdowns and likely return of normalcy and, therefore, this Court considered it proper to dispose of the said suo motu petition with specific directions that while computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 to 14.03.2021 would stand excluded. Though the said order dated 08.03.2021 was passed with a belief that the adverse effects of the pandemic were receding and normalcy was returning but, the spread of virus continued and this led to an exponential surge in COVID-19 cases; and to the second wave of pandemic in the country around the months of March-April, 2021. In this turn of events, this Court again took up the matter in SMWP No. 3 of 2020 on MA No. 665 of 2021, as moved by the Supreme Court Advocate-on-Record Association and passed the necessary order on 27.04.2021 in revival of the previous orders.

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57. Reverting to the orders passed by this Court, noticeable it is that on 27.04.2021, this Court restored the order dated 23.03.2020 and it was directed, in continuation of the order dated 08.03.2021, that the periods of limitation as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended. Ultimately, the said MA No. 665 of 2021 was



disposed of on 23.09.2021 with this Court issuing directions similar to those contained in the order dated 08.03.2021 but while providing that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded.

58. We are not elaborating on other directions issued by this Court but, when read as a whole, it is but clear that the anxiety of this Court had been to obviate the hardships likely to be suffered by the litigants during the onslaughts of this pandemic. Hence, the legal effect and coverage of the orders passed by this Court in SMWP No. 3 of 2020 cannot be unnecessarily narrowed and rather, having regard to their purpose and object, full effect is required to be given to such orders and directions.⁹

59. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23.03.2020, this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15.03.2020 but, while concluding the matter on 23.09.2021, this Court specifically provided for exclusion of the period from 15.03.2020 till 02.10.2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government¹⁰). The excluded period, as a necessary



consequence, results in enlargement of time, over and above the period prescribed.

60. 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.

61. 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.

62. Therefore, in view of the orders passed by this Court in SMWP No. 3 of 2020, we have no hesitation in holding that the time limit for filing the written statement by the appellant in the subject suit did not come to an end on 06.05.2021.”



8. In the present case, Mr. Vinay Kumar, learned counsel for the plaintiff-respondent, has referred to the fact that the defendant, in fact, had entered appearance in the suit but did not file his written statement. A similar argument is dealt with by the Supreme Court in *Prakash Corporates* (supra) thus:-

“71. On behalf of the respondent, much emphasis has been laid on the submission that the appellant was regularly appearing in the Court and, therefore, cannot take advantage of the orders passed in SMWP No. 3 of 2020. It is true that the appellant had indeed caused appearance in the Court in response to the summons and sought time for filing its written statement but at the same time, it is also undeniable that at the relevant point of time, the second wave of pandemic was simmering and then, it engulfed the country with rather unexpected intensity and ferocity. Then, on 27.04.2021, this Court restored the operation of the order dated 23.03.2020 in SMWP No. 3 of 2020. Putting all these factors together, we are unable to accept the submissions made on behalf of the respondent that because of earlier appearance or prayer for adjournment, the defendant-appellant would not be entitled to the relaxation available under the extraordinary orders passed by this Court.”

9. In the present case, the entire period under consideration [from 23.03.2021 to 26.07.2021] falls within the period contemplated in the orders of the Supreme Court in *Suo Motu* Writ Petition (Civil) No. 3/2020. In view of the judgment of the Supreme Court in *Prakash Corporates*, it follows that in the present case also, the time to file written statement did not come to a close on 22.07.2021 as held by the



Trial Court and, in fact, stood extended by virtue of the orders of the Supreme Court passed in *Suo Motu* Writ Petition (Civil) No. 3/2020. Consequently, the judgments of this Court relied upon in the order of the Trial Court cannot assist the plaintiff in the facts and circumstances of this case. In fact, as far as the judgment in *Bharat Kalra* is concerned, it appears that a Special Leave Petition (C) No. 63/2022 is pending against the said judgment, in which the Supreme Court has, by an order dated 28.01.2022, stayed further proceedings before the Trial Court.

10. For the reasons aforesaid, the view taken by the Trial Court cannot be sustained. The petition is, therefore, allowed and the impugned order of the Trial Court dated 10.01.2022 is set aside. The application of the defendant filed before the Trial Court under Order VIII Rule 1 of the CPC is allowed and the Trial Court is directed to take on record the written statement filed by the defendant on 26.08.2021.

11. I am informed that the proceedings are next listed before the Trial Court on 31.03.2022. Learned counsel for the parties will appear before the Trial Court on the said date and the Trial Court will take up the matter for case management/ framing of the issues and pass further directions in this regard.

12. Pending application stands disposed of.

13. There will be no order as to costs.

PRATEEK JALAN, J

MARCH 08, 2022/‘vp’/