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

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Date of Decision : 15th October, 2015

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CM(M) 597/2015

M/S NITCO ROADWAYS PVT LTD & ORS Petitioners
Through : Ms.Sumita Hazarika and Mr.Ritesh
Dhar Dubey, Advocates.
versus

MOHAN SINGH RAWAT & ORS Respondents
Through : Mr.C.M.Thapliyal and Mr.S.P.Paul,
Advocates.

PRATIBHA RANI, J. (Oral)

CM(M) 597/2015

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of Constitution of India with a prayer to set aside the order dated 21.04.2015 whereby the application filed by the petitioners under Order IX Rule 7 CPC has been dismissed by the learned Trial Court and declined the permission to place on record the written statement.
2. Learned counsel for the petitioners has submitted that the impugned order needs interference by this Court in exercise of its power under Article 227 of the Constitution of India as the same is illegal, perverse and contrary to the legal position.
3. Learned counsel for the petitioners has further submitted that the learned Trial Court has committed error in placing reliance on the case reported as Opera Global Pvt. Ltd. vs. Travel Planners Pvt. Ltd. (2010) 169 DLT 271 in CM(M) No.997/2009 decided on 13.04.2010 by this Court which has been set aside by the Supreme Court in Civil Appeal No.3343/2011 (arising out of SLP (Civil) No.20967/2010) titled as M/s

Opera Global Pvt. Ltd. & Anr. vs. Travel Planners P.Ltd. decided on 18.04.2011.

4. Learned counsel for the petitioners has submitted that it is a case of wrong noting of date by the counsel for the petitioners, which has resulted into this situation and for this, the litigant cannot be made to suffer. It has been further submitted that the matter was listed on 07.04.2014 and the next date of hearing has been wrongly noted as 07.07.2014 instead of 03.07.2014. Due to wrong noting of date, none could appear on behalf of the petitioners/defendants on 03.07.2014 and petitioners/defendants have been proceeded exparte. The application under Order IX Rule 7 CPC could be filed by the defendant before the next date of hearing which has been done in this case. However, the learned Trial Court declined the prayer observing that the written statement has not been filed within the prescribed period, hence wrong noting of date by the counsel has no effect, no explanation has been given for not filing the written statement within the period of 90 days which stood expired before 03.07.2014, when the petitioners/defendants have been proceeded exparte. The learned Trial Court held the petitioners/defendants had a right to join the proceedings which they have joined but they cannot be relegated to the stage where they can be permitted to file the written statement.

5. Learned counsel for the petitioners has relied upon Rajesh Kumar @ Raju vs. State & Ors. in CM(M) No.1031/2008 wherein it was held that the limitation for moving an application under Order IX Rule 7 CPC is prescribed in the provision itself and it can be filed on or before the next date of hearing. A party has a right to take part in the subsequent proceedings but if a party intends to be relegated back to the position which he would have been if he had appeared on the date when proceeded exparte,

then only an application under Order IX Rule 7 CPC is required to be filed. For taking part in the proceedings, there was no requirement for filing an application and it was only for relegating back to the stage of filing the written statement that such application has been filed, which has been wrongly dismissed by the learned Trial Court.

6. I have considered the submissions made on behalf of the petitioners.

7. Order VIII Rule 1 CPC provides as under:

'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.'

8. The proceedings dated 21.04.2015 contain the following reasons for rejection of the prayer of the petitioners for permitting them to place on record the written statement:-

(i) In a suit for recovery of sum of ₹70,000/-, summons on the defendants No.1 to 4 have been served on 18.02.2014 and defendant No.5 has been served on 22.03.2014.

(ii) On the summons, there was a clear stipulation to file the written statement within a period of 30 days from the date of service of the summons but the written statement has not been filed.

(iii) Even if the maximum period of 90 days is granted to the petitioners, defendants No.1 to 4 could have filed the written statement by 18.04.2014 and defendant No.5 could have filed the written statement by 22.06.2014.

(iv) Wrong noting of date i.e. in place of 03.07.2014, it was noted as 07.07.2014, is no ground to permit the defendants to file the written statement for the reason that on 07.04.2014 direction was given by the Court

to file the written statement within the stipulated period as per provisions of Code of Civil Procedure.

(v) Even if the petitioners/defendant came to know about the exparte order on 07.07.2014, they waited for another two months to file the application under disposal which was filed on 05.09.2014.

(vi) The defendants could have joined the proceedings which they have already joined from 05.09.2014 onward and allowed to participate in the proceedings. The written statement has been filed on 05.09.2014 beyond the prescribed period without disclosing the reasons which prevented the defendants from filing the written statement within the prescribed period.

9. In the impugned order, the learned Trial Court noted the observation made in Opera Global Pvt. Ltd. vs. Travel Planners Pvt. Ltd. (2010) 169 DLT 271 as under:-

'The observation of the Hon'ble High Court of Delhi in the judgment tilted as Opera Global Pvt. Ltd. vs. Travel Planners Pvt. Ltd. [(2010) 169 DLT 271] [CM(Main) No.997/2009 dated 13.04.2010 Delhi High Court] are worth noting. In the said precedent, there was a delay of about 270 days from service of summons in filing the W/S. The Hon'ble High Court did not find any justification for the W/S to be taken on record. The Hon'ble High Court observed that there was no doubt that the procedure is handmaid of justice but the procedure as laid down by the legislature is handmaid of justice and the courts are bound by this procedure. It was held that individual courts did not have liberty to throw the procedure into dustbin and formulate their own procedure in the name of justice. It was held that if the procedure as laid down by legislature has to be ignored by the Courts for such trivial reasons, total anarchy shall prevail and that would make the legislature irrelevant.'

10. The submission made by learned counsel for the petitioners that in Civil Appeal No.3343 (arising out of SLP (Civil) No.20967/2010) the order passed by this Court in Opera Global Pvt. Ltd. vs. Travel Planners Pvt. Ltd.

(Supra) was set aside, needs to be rejected. While allowing Civil Appeal No.3343/2011 (arising out of SLP (Civil) No.20967/2010) titled as M/s Opera Global Pvt. Ltd. & Anr. vs. Travel Planners P.Ltd. the Apex Court has specifically observed that in peculiar facts and circumstances of the case, the petition has been allowed and it shall not be treated as precedent. Thus, merely because the Civil Appeal No.3343/2011 (arising out of SLP (Civil) No.20967/2010) against the order dated 13.04.2010 of this Court in CM(M) No.997/2009 has been allowed, has no effect on the observation made by learned Single Judge of this Court while disposing of CM(M) No.997/2009.

11. In the instant case, the service on defendants No.1 to 4 was effected on 18.02.2014 and on defendant No.5 on 22.03.2014. The written statement has not been filed within the period of 30 days. No application seeking extension of the time to file the written statement was filed explaining the circumstances under which the period was required to be extended by the learned Trial Court. On 03.07.2014 when right to file the written statement was closed by the learned Trial Court, even the maximum period permissible under the law had already expired. Thus, the learned Trial Court had rightly observed that even if it is treated to be a case of wrong noting of date, the stipulated period has expired much before that date.

12. Finding no illegality, irrationality or procedural impropriety in the impugned order, the petition is dismissed.

13. No costs.

CM No.11372/2015

Dismissed as infructuous.

PRATIBHA RANI, J.

OCTOBER 15, 2015/ 'st'