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

+ **CS(OS) 774/2014**

A A NAYAK CONSTRUCTION PVT LTD Plaintiff
Through None

versus

ALHUWALIA CONTRACTS INDIA LTD Defendant
Through Mr.Rishi Kapoor, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

% **12.07.2016**

OA No.22/2015(by the appellant/defendant against the order dated 30.10.2014 passed by the Joint Registrar)

1. The present Chamber Appeal has been filed by the appellant/defendant against the order dated 30.10.2014, passed by the learned Joint Registrar who had closed its right to file the written statement.
2. Notice was issued on the present appeal on 16.1.2015, returnable on 2.2.2015. On 2.2.2015, learned counsel for the respondent/plaintiff in the suit had appeared and the appeal was adjourned to 29.4.2015 for arguments. A perusal of the file reveals that despite sufficient time having been granted to the respondent/plaintiff, no reply has been filed. Nor has the counsel for the respondent/plaintiff turned up today.
3. Before dealing with the Chamber Appeal and considering the submissions made by the counsel for the appellant/defendant, reference to certain relevant dates is considered necessary.

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4. The plaintiff has instituted the present suit for recovery of a sum of Rs.29,14,962.61 paise along with interest against the defendant towards the services allegedly rendered. Summons were issued in the suit on 18.3.2014, returnable on 14.7.2014. As per the records, the defendant was served with the summons in the suit on 15.5.2014. If the period of thirty days prescribed under the statute for filing the written statement is reckoned from 15.5.2014, the same would have expired on 14.6.2014, i.e., during the Court summer vacations. The extended period of thirty days reckoned from 14.6.2014, would have expired on 13.7.2014 and the maximum period of ninety days reckoned from the date of service of the summons upon the defendant would have expired on 12.8.2014.

5. However, the defendant did not file any written statement. Instead, on 30.10.2014, learned counsel for the defendant had appeared before the Joint Registrar and stated that he had not filed the written statement as the defendant was proposing to file an application under Section 8 of the Arbitration and Conciliation Act, 1996(for short '**the Act**') . Further, counsel for the defendant had stated that he would be filing the said application in the course of the day.

6. While observing that there was no valid excuse for not filing the written statement within the stipulated time and further noting that till 30.10.2014, the defendant had not filed an application under Section 8 of the Act, the learned Joint Registrar had proceeded to close its right to file the written statement. The records reveal that an application under Section 8 of the Act came to be filed by the defendant only on 7.11.2014, i.e., after a lapse of almost three months reckoned from 12.8.2014, the date on which

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the maximum period of ninety days available to the defendant to file the written statement, would have lapsed and after expiry of a period of 180 days if reckoned from 15.5.2014, the date on which the defendant had been served with the summons in the suit.

7. The submission made by the counsel for the defendant that the learned Joint Registrar had failed to appreciate the fact that the defendant was in the process of filing an application under Section 8 of the Act and he ought to have refrained from closing its right to file the written statement, is misconceived inasmuch as the position on 30.10.2014, the date of passing the impugned order, was that the defendant had neither filed the written statement, nor an application for seeking extension of time for filing the same and not even an application under Section 8 of the Act, much less an application for seeking extension of time for filing such an application.

8. In these circumstances, this court is not inclined to interfere in the order dated 30.10.2014, whereunder the right of the defendant to file the written statement was closed. Accordingly, the present Chamber Appeal is dismissed as being devoid of merits.

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1. In view of the Notification No.27187/DHC/Orgl. dated 24.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), the present suit is transferred to the Court of the District Judge (South), Saket Courts Complex for further proceedings before the competent court on 1.9.2016. The parties shall appear before the concerned court for further proceedings.

2. As none is present on behalf of the plaintiff, counsel for the defendant shall give a written intimation of the next date of hearing to the counsel for the plaintiff so that all the parties are present before the concerned court.

HIMA KOHLI, J

JULY 12, 2016
mk/rkb