

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

+ **FAO (OS) 295/2016**

Date of decision: 25th August, 2017

AHLUWALIA CONTRACTS INDIA LTD Appellant

Through: Mr. Rishi Kapoor with Mr. Pankaj
Kapoor & Mr. Raunak Satpathy,
Advocates.

versus

A A NAYAK CONSTRUCTIONS PVT LIMITEDRespondent

Through: Mr. Ashutosh Dubey, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

This intra court appeal impugns the order dated 12th July, 2016 whereby O.A. No.22/2015 filed by the appellant challenging the order of the Joint Registrar closing its right to file written statement, has been dismissed.

2. The respondent has filed the suit for recovery of Rs.29,14,962/- on account of work of water proofing, construction, etc. executed by them for the appellant.

3. The appellant was served with summons in the suit on 15th May, 2014. Thirty days period for filing of the written statement came to an end on 14th June, 2014, when the High Court was closed on account of summer vacations. The written statement was not filed on re-opening or within 90 days of service, which came to end

on 12th August, 2014. No application for extension of time was made till 30th October, 2014 when the Joint Registrar closed the right of the appellant to file written statement.

4. The appellant, on 7th November, 2014, filed an application under Section 8 of the Arbitration and Conciliation Act.

5. The appellant in these circumstances filed O.A. No.22/2015 before the Single Judge for setting aside order dated 30th October, 2014 by which right of the appellant to file written statement was closed.

6. As already noticed above, the appellant has filed an application under Section 8 of the Arbitration and Conciliation Act, which is stated to be still pending before the District Judge on transfer of suit in view of the change in pecuniary jurisdiction.

7. The present appeal has remained pending since October, 2016.

8. Noticing the factual matrix, we feel that the appellant can be granted one opportunity to file its written statement with imposition of costs. Accordingly, we allow the appellant to file written statement within six weeks, subject to payment of costs of Rs.35,000/- to the respondent. The said costs be paid to the respondent on or before the next date of hearing before the District Judge. We clarify that payment of costs and right to file written statement does not mean that appellant has given up and is not pressing its application under Section 8 of the Arbitration and

Conciliation Act. In fact, the counsel for the respondent has submitted that the application under Section 8 of the Arbitration and Conciliation Act may not be maintainable in case the appellant's right to file written statement was closed. This order would also take care of the said objection.

9. We may also note that the appellant has agreed to pay the costs as stated above.

The appeal is disposed of.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

AUGUST 25, 2017
srb

