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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.623/2017 & CM No.21065/2017 (for stay).
VIKAS VIDYUTIKARAN PVT LTD Petitioner
Through: Mr. Amit Chadha, Mr. Jugal Bagga
and Mr. Deepal Goel, Advs.
versus
MANHAR GARG Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **20.07.2017**

CM No.21066/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The CM stands disposed of.

CM(M) No.623/2017 & CM No.21065/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 17th May, 2017 of the Court of the Additional District Judge-14 (Central), Tis Hazari Court, Delhi in CS No.19299/2016 filed by the respondent / plaintiff against the petitioner / defendant for recovery of Rs.11,11,800/-) of dismissal of the application filed by the petitioner / defendant for extension of time for filing the written statement and closing the right of the petitioner / defendant to file written statement.
4. The impugned order records that the petitioner / defendant was served with the summons of the suit on 25th November, 2016 and no written statement had been filed for 120 days.
5. The counsel for the petitioner / defendant states that the petitioner /

defendant was not served with the summons of the suit on 25th November, 2016.

6. Though the petitioner / defendant along with the petition did not file the copies of the order sheet but has now handed over in the Court copies of the order sheets in the suit and which are taken on record.

7. A perusal of the said order sheet shows that (i) summons of the suit were first ordered to be issued to the petitioner / defendant on 10th August, 2016; (ii) the petitioner / defendant remained unserved; (iii) the respondent / plaintiff on 19th November, 2016 filed fresh address for service of the petitioner / defendant and fresh summons were ordered to be issued at the said address for 20th February, 2017; (iv) the counsel for the petitioner / defendant appeared before the learned Additional District Judge on 20th February, 2017 and filed *Vakalatnama* and sought time to file written statement; (v) written statement was permitted to be filed in accordance with law and the suit posted for 17th May, 2017; and, (vi) on 17th May, 2017 an application for extension of time for filing the written statement was filed pleading that no copies of the documents had been served on the petitioner / defendant and the junior counsel for the petitioner / defendant who had appeared before the Court on 17th May, 2017 had not been able to make a submission in this regard.

8. The learned Additional District Judge in the impugned order has reasoned that after filing of the *Vakalatnama* on 20th February, 2017 there was sufficient time for the petitioner / defendant to, even if had not received copies of the documents, obtain copies of the documents and there was no

merit in the plea of the copies of the documents having not been supplied.

9. I have enquired from the counsel for the petitioner / defendant that if not on 25th November, 2016, when was the petitioner / defendant served with the summons of the suit.

10. The counsel for the petitioner / defendant states that the petitioner / defendant appeared on 20th February, 2017 in response to a telephonic communication.

11. No error can be found with the order closing the right of the petitioner / defendant to file written statement.

12. I may however record that the learned Additional District Judge in the impugned order has observed that as per Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, extension of the period for filing written statement beyond 120 days cannot be granted.

13. The said reasoning is erroneous. Section 16 of the Commercial Courts Act amends the CPC in the manner specified in Schedule thereto only in its application to any suit in respect of a commercial dispute of a specified value. Section 2(1)(i) of the Commercial Courts Act defines specified value as not less than Rs.1 crore. The suit from which this petition arises thus did not qualify as a Suit in respect of a commercial dispute of a specified value for the CPC as amended by Commercial Courts Act to apply.

14. Further, the learned Additional District Judge, after closing the right of the petitioner / defendant to file written statement, has posted the suit to 4th August, 2017, for evidence of the respondent/plaintiff.

15. I have suggested to the counsel for the petitioner / defendant that an opportunity can be given to the respondent / plaintiff to, if agreeable to be compensated by ample costs for the delay caused by the petitioner / defendant, allow the written statement of petitioner/defendant to be taken on record. Costs of Rs.75,000/- payable by Bank Draft to the respondent / plaintiff in the name of the respondent / plaintiff have been suggested.

16. The counsel for the petitioner / defendant is agreeable thereto.

17. Accordingly, for the sake of expeditious disposal of suit after petitioner/defendant files written statement, this petition is disposed of with the following directions:-

- (i) The petitioner / defendant, if desires its written statement to be considered to be taken on record, shall on or before 24th July, 2017 deliver to the counsel for the respondent / plaintiff advance copy of the written statement along with Bank Draft of Rs.75,000/- towards costs in favour of the respondent / plaintiff along with copy of this order and file the written statement in the Suit Court also on the same day.
- (ii) It will be open to the respondent/plaintiff to, subject to acceptance of costs aforesaid, not object to the written statement being taken on record.
- (iii) The respondent /plaintiff/ his counsel shall indicate to the counsel for the petitioner / defendant on or before 25th July, 2017 whether the respondent / plaintiff is agreeable to the written statement being taken on record subject to costs and in which case the respondent / plaintiff shall be entitled to encash

the Demand Draft and to on the next date before the Suit Court i.e. 4th August, 2017 file his replication to the written statement and the Trial Court will then proceed to decide the suit in accordance with law.

- (iv) If the respondent / plaintiff agrees to accept the costs, the petitioner / defendant shall during the further proceedings in the suit be not entitled to any adjournment and if fails to take any steps in the suit, will suffer the consequences thereof.
- (v) If the aforesaid course of action is not acceptable to the respondent / plaintiff, the respondent / plaintiff shall be entitled to refuse cost, lead its evidence before Suit Court on 4th August, 2017 and make an application in this Court for variation of the aforesaid order.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

JULY 20, 2017
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