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

+ **CS(COMM) 488/2017 & I.A. 8403/2017**

**SAREGAMA INDIA LIMITED** ..... Plaintiff  
Through: Mr. Ankur Sangal, Advocate with  
Ms. Pragya Mishra and Mr. Shiva  
Tokas, Advocates.

versus

**MR JAI MANJIT SINGH & OTHERS** ..... Defendants  
Through: Mr. Jugul Kishor Gupta, Advocate  
with Ms. Ruma Pathak, Advocate  
for defendants No.2 and 3.

% Date of Decision: 08<sup>th</sup> December, 2017

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

**J U D G M E N T**

**MANMOHAN, J: (Oral)**

1. No written statement has been filed by the defendants No.2 and 3.
2. Learned counsel for the defendants No.2 and 3 prays for four weeks further time to file a written statement.
3. Since more than 120 days have been lapsed, this Court is powerless to extend the time for filing the written statement. A Coordinate Bench of this Court in *Oku Tech Private Limited Vs. Sangeet Agarwal & Ors., CS(OS) 3390/2015* has held as under:-

*“8. The amendments to the CPC brought out by the Schedule to the Act seek to fill the above gap, as it were, in the CPC. The substituted second proviso to Order V Rule 1 and the substituted proviso to Order VIII Rule 1 place an outer limit of 120 days from the date of service of summons up to which the Court can grant time to file written statement. It categorically states that “on expiry of 120 days from the date of service of summons, the Defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.” This is re-emphasised by inserting a proviso to Order VIII Rule 10 CPC, which after such insertion, reads as under:*

*“10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order relating to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.*

*Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”*

*9. Therefore, it is plain that the above amendment reflects the legislative intent to take away the discretion of the Court in extending the time for filing the written statement.”*

4. In view thereof, the right of the defendants No.2 and 3 to file a written statement is closed.
5. Learned counsel for plaintiff states that he would be satisfied if the present suit is decreed in accordance with prayer (i) of the present

plaint. He gives up his relief for rendition of accounts, damages as well as costs.

6. Considering the fact that the remaining defendant has already been proceeded ex parte, this Court is of the view that no useful purpose would be served by relegating the plaintiff to lead evidence qua the reliefs claimed.

7. A Coordinate Bench of this Court in ***Satya Infrastructure Ltd. & Ors. Vs. Satya Infra & Estates Pvt. Ltd., 2013 SCC OnLine Del 508*** has held as under:-

*“3. The plaintiffs have given the address of the defendant of Bangalore, Karnataka. The affidavit of service dated 26.11.2012 has been filed by the Court Clerk of the Advocate for the plaintiffs to the effect that notice was sent to the defendant by Blue Dart Courier on 15.11.2012 and was delivered on 16.11.2012. There is no reason for this Court to disbelieve the said affidavit emanating from the chamber of the Advocate for the plaintiffs and it has to be presumed that the shipment which has been reported to be delivered to the defendant contained the summons of the suit and notice of the application together with copies of the plaint, application and other documents etc. If it is discovered otherwise, of course the Advocate for the plaintiffs would be accountable. The defendant is thus proceeded against ex parte.*

*4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead ex parte evidence. The counsel for the plaintiffs states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.*

*5. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the*

*form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction.”*

8. Keeping in view the aforesaid mandate of law, this Court is of the view that there is no need to relegate the plaintiff to lead ex parte evidence.

9. In fact, this Court is of the view that the plaintiff on the basis of the averments in the plaint and the documents filed therewith has made out a case for relief of permanent injunction as claimed.

10. Consequently, present suit is decreed in accordance with prayer (i) of the present suit. Registry is directed to prepare a decree sheet accordingly.

**MANMOHAN, J**

**DECEMBER 08, 2017**

rn/js