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

+ CM(M) 1008/2017

CYGNUS SPLENDID LIMITED & ORS Petitioners
Through: Mr. Ayush Sharma, Adv.

Versus

B.N. POLYMERS PVT. LTD. Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **13.09.2017**

CM No.33516/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 1008/2017 & CM No.33515/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order dated 31st July, 2017 in CS No.524/2017 of the Court of Additional District Judge (ADJ)-03, Patiala House Courts, New Delhi.
4. The counsel for the petitioners has been heard.
5. The respondent instituted the suit, from which this petition arises, for recovery of Rs.9,35,037/- from the petitioners. Summons of the suit were ordered to be issued and on 4th May, 2017, the following order was passed:

"04.05.2017

*Present: Sh. P. Vatsa, counsel for plaintiff.
None for defendant.*

Process sent for service to defendant received back with report of service on 17.03.2017. Since none is present on behalf of defendants, defence of defendant stands struck off.

At this stage, Sh. Sushil Kumar Tekriwal, Advocate, appeared on behalf of the defendants and filed memo of appearance on behalf of all the defendants.

Now to come up for further proceedings as well as filing of written statement on 31.07.2017.”

Thereafter, on 31st July, 2017, the following impugned order was passed:

“31.07.2017

Present: None for plaintiff.

Ld. Counsel Sh. Ayush Sharma for defendants.

Defence of defendant has already struck off by this Court on 04.05.2017. No WS filed despite due service of 17.03.2017. Even thereafter no application seeking recall of the order or seeking time to file WS moved.

Out of pleadings, following points of consideration arise:-

POINTS OF CONSIDERATION-

1. Whether plaintiff is entitled to recovery of Rs.9,35,037 lakhs along with 24% p.a. interest?

OPP

2. Relief.

No other issue arise or pressed.

Now to come up for PE on 22.09.2017.”

6. The counsel for the petitioners has argued that there is a factual error in the impugned order, inasmuch as the learned ADJ in the impugned order has failed to notice that though in the first part of the order dated 4th May, 2017, the defence of the petitioners/defendants was struck off but in the subsequent part of the order, the petitioners/defendants were given time till

31st July, 2017 to file the written statement. It is argued that therefore there was no need for the petitioners/defendants to file any application for recall of the order dated 4th May, 2017.

7. Even if that be so, the fact remains that the petitioners/defendants, even on 31st July, 2017 did not file the written statement.

8. The counsel for the petitioners/defendants admits that the petitioners/defendants on 31st July, 2017 did not file the written statement but states that the petitioners/defendants on 31st July, 2017 handed over in the Court an application seeking condonation of delay in filing the written statement and seeking time till 14th August, 2017 to file the written statement and copy of which application is filed at pages 25 to 27 of the paper book.

9. The impugned order dated 31st July, 2017 expressly records that no application seeking time to file written statement had been moved. Ordinarily, had any application been filed, it would have found mention in the order dated 31st July, 2017.

10. The counsel for the petitioners/defendants states that he personally handed over the application. However, on enquiry, whether the application is on the record of the suit file which can be requisitioned, the counsel is not willing to take responsibility.

11. The fact thus remains that notwithstanding the service on 17th March, 2017, till date there is no written statement. This petition against the order dated 31st July, 2017, without even obtaining certified copy thereof, has been filed now only and has come up today, shortly before the next date in

the suit. Along with this petition also there is no written statement. The counsel for the petitioners/defendants today also is not carrying any written statement with him and the written statement evidently is not ready till now. The counsel states that written statement will be filed before 22nd September, 2017. He then states that it will be filed by Saturday i.e. 16th September, 2017.

12. Time stipulated by the Code of Civil Procedure, 1908 (CPC) for filing the written statement, though held to be directory cannot be so extended at the wish of the petitioners/defendants. The petitioners/defendants have clearly shown scant disregard for the timeline stipulated in the CPC for filing the written statement.

13. I have in *Satpal Buggal Vs. Gursharan Buggal* 2013 SCC OnLine Del 4311 and in order dated 2nd August, 2017 in CM(M) No.813/2017 titled *Leena Devi Vs. Sushil Aggarwal* and in judgment dated 2nd August, 2017 in CM(M) No.812/2017 titled *Anil Kumar Goel Vs. Arun Kumar Goel* given detailed reasons for not extending the said time at the mere asking, as is being sought here and need to reiterate the said reasons is not felt.

14. No interference with the impugned order of the ADJ is thus required.

15. At this stage, the counsel for the petitioners/defendants states that his statement be recorded that the petitioners/defendants were not informed by the earlier lawyer about the filing of the written statement.

16. Summons of the suit must have been served on the petitioners/defendants and it was for the petitioners/defendants to follow up the matter with their Advocate and merely by placing blame on the earlier

Advocate, extension of time cannot be obtained to the prejudice of the respondent / plaintiff.

17. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 13, 2017

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(Corrected and released on 13th October, 2017).