

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

% Date of decision: 6th December, 2017

+ FAO(OS) (COMM) 192/2017

RAVI AND SINGH COMMUNICATION

..... Appellant

Through Mr. Pravir K. Jain, Adv.

versus

SIFY TECHNOLOGIES LIMITED

..... Respondent

Through Mr. Amitesh C. Mishra, Adv. and
Mr. Pankaj Singh Adv. for respondent

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 8th August, 2017 passed by the learned Single Judge of this Court by which, the written statement filed by the defendant has been taken on record on payment of cost of Rs.50,000/-. It is also the grievance of the appellant that on 8th August, 2017 time was extended for filing the written statement beyond the prescribed period of 120 days.

2. Mr. Jain relies on a decision rendered by the Single Judge of this Court in the case of *OKU Tech Private Limited vs. Sangeet Agarwal and Ors. CS (OS) 3390/2015*, decided on 11th August, 2016, wherein it has been held that time for filing written statement cannot be extended beyond a period of 120 days. Mr. Jain also contends that the impugned order is devoid of any reason for

granting extension of time beyond 30 days. Mr. Jain contends that there is no reason for granting the extension beyond 30 days as no application was filed by the defendant seeking extension of time. Mr. Jain submits that an application being IA No. 11469/2017 was filed by the plaintiff under Section 16 read with Schedule of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 for taking off the record the written statement filed by the defendant after expiry of 120 days of service of summons on defendant. This application came up for hearing on 27th September, 2017. However, leave was sought to withdraw the application to challenge the order dated 8th August, 2017.

3. Heard. The present appeal, in our view is not maintainable under Section 16 read with Schedule of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015. In view of the judgment of the Division Bench of this Court in the case of ***HPL (India) Limited and Ors. vs. QRG Enterprises and Ors. in FAO (OS) (COMM) No. 12/2017 and CM No. 1002/2017***, decided on 14th February, 2017. At this stage, Mr. Jain, learned counsel appearing for the petitioner submits that the petitioner may be granted leave to either revive the IA No. 11469/2017 or may be allowed to file a fresh application before the learned Single Judge.

4. Learned counsel appearing for the respondent however, submits that the written statement was filed much before 120 days and there is no infirmity in the order passed by the learned Single

Judge granting time to file written statement as the documents were not supplied along with plaint and the same were supplied only on 13th May, 2017 as reflected in the order of the Joint Registrar dated 19th July, 2017.

5. While the appeal is dismissed, liberty as prayed is granted. It would be open for the appellant to revive the IA No. 11469/2017 or make a fresh application before the Single Judge.

CM No. 40429/2017

Dismissed as infructuous.

G.S.SISTANI, J

V. KAMESWAR RAO, J

DECEMBER 06, 2017/aky