

\$~32

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

+ **FAO(OS) (COMM) 23/2018**

SUNIL ALAGH

..... Appellant

Through

Mr. Manav Gupta and
Mr. Prabhasahay Kaur, Mr. Sahil
Garg, Ms. Esha Dutta, Advs.

versus

SHIVRAJ PURI & ANR.

..... Respondents

Through

Mr. Counsel (appearance not given)

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

%

07.02.2018

We have heard counsel for the appellant.

It is submitted that the reasoning given in the impugned order requires consideration on two issues. Firstly, whether or not the plaint and the documents were served with the summons on the defendant is a question of fact and should have been ascertained and decided. Self serving statement given by the defendant that they were not served with the plaint and the documents, was not sufficient. Secondly, there was deliberate delay on the part of the defendant in making a request for supply of a copy of the plaint and the documents. The defendant was served with the summons in the suit on 11.12.2016. Power of Attorney dated 13.01.2017 was filed on 16.01.2017. Pertinently, no appearance was made by the defendant before the Joint Registrar on

13.01.2017. Request for supply of copy of the plaint and the documents was made on 10.04.2017. The defendant should have immediately, by writing a letter, asked for a copy of the plaint and documents. In such circumstances, even if the period of 120 days had not expired, extension of time should not have been granted.

However, counsel for the appellant submits that he would be satisfied if the costs are waived, as the issue of delay and default in filing of the written statement and whether there was delay beyond 120 days, would delay the proceedings.

We accordingly are not issuing any notice in the present appeal but would waive the costs imposed. We would also clarify that the impugned order dated 14.12.2017 is based on facts and would not be treated as laying down any legal ratio, one way or the other.

Recording the above, the present appeal stands disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 07, 2018

b