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

% *Date of Judgment : 31st October, 2019*

+ **FAO(OS) (COMM) 281/2019 & C.M.45173/2019 (stay)**

NATIONAL INSURANCE CO LTD. Appellant

Through: Mr.Madan Gera, Advocate

versus

**M/S NATIONAL BUILDING CONSTRUCTION INDIA LTD &
ORS. Respondents**

**Through: Ms.Shilpi Chowdhary and Mr.Jasdeep
Singh Dhillon, Advts. for NBCC.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The present appeal is directed against order dated 03.09.2019 passed by a learned Single Judge of this Court in a Chamber Appeal, being O.A.No.159/2018 filed by the appellant herein (defendant no.3 in the commercial suit being CS (COMM) 232/2017).
2. Some necessary facts which are required to be noticed for disposal of this appeal are that a suit bearing CS (COMM) No. 232/2017 was instituted by respondent No.1 herein against three defendants for recovery of Rs.3,15,27,143/- along with interest at rate of 18% per annum. Since the written statement was not filed within the statutory period of 30 days plus the permissible further time of 90 days, the right to file written statement was closed; and an application seeking condonation of delay filed by the

appellant herein (defendant no.3) was dismissed by the Joint Registrar by an order dated 16.11.2018. The Chamber Appeal also stands dismissed by the learned Single Judge, which has led to the filing of the present appeal.

3. Mr. Gera, counsel for the appellant submits that the appellant is a nationalized bank and there is no reason for the bank to deny receipt of summons through the Bailiff on 19.06.2017. It is contended that an incomplete paper book was received by the appellant on 22.08.2017; and he received telephonic instructions to appear before the Joint Registrar on 24.08.2017. Counsel further submits that at the time of going through the paper book, he found that two pages, being page Nos.27 and 28, were missing and accordingly he addressed a communication to the plaintiff on 19.09.2017 seeking a complete set of the paper book. He submits that realizing that an incomplete paper book had been supplied to the plaintiff and accordingly supplied a complete set of paper book on 27.10.2017. Thereafter, the written statement was prepared and filed within the permissible statutory period of 120 days.
4. Learned counsel for the respondents on the other hand submits that the appellant was duly served through Bailiff on 19.06.2017. She submits that mere denial is no denial in the eyes of law. She submits that the summons were duly accepted and the stamp of the appellant insurance company was affixed at not one but two places and duly initialed. She submits that there is an endorsement on the summons that complete paper book is enclosed. She submits that the appellant was served a second time by speed post; and no complaint was made when the matter was listed on 24.08.2017 with respect to any incomplete paper book. She

submits that a copy of the complete set was provided more out of courtesy and not as an admission that an incomplete set of papers had been supplied. She submits that the letter dated 19.09.2017 was addressed only to gain time; however, time cannot be extended in view Order VIII Rule 1 of the Code of Civil Procedure. She further submits that there is no infirmity in the order of the Joint Registrar or the Single Judge which would require interference in the present proceedings.

5. We have heard learned counsels for the parties and have considered their rival submissions.
6. It is not in dispute that the written statement in a commercial suit is required to be filed within a period of 30 days, with a maximum permissible further period of 90 days, that is to say within a maximum period of 120 days. It is not in dispute before us that time cannot be extended beyond the period of 120 days.
7. The questions which arise for our consideration are firstly, was the appellant served on 19.06.2017; and secondly, was an incomplete paper book supplied, and if so, the effect thereof?
8. We have examined the copy of the original summons and find that the summons bear the seal of the appellant insurance company, at not one but two places, including at the spot which reads “Encl: Copy of the plaint (complete paper book)”. This fact gains importance for the reason that the appellant cannot be compared to an illiterate litigant. It is not that the National Insurance Company, which files and defends large number of cases, is unaware that court summons are received with a paper book. It is hard to accept that having affixed their seal at not one but two places,

the appellant did not receive the summons along with the paperbook on 19.06.2017. The endorsement made by the bailiff is reproduced below.:

“On 19.06.2017 at about 11.30 A.M. I served a copy of summons for the 3rd Defendant to its receiving assistant who signed and put their office seal on the original at 3, Middleton Street, Kol.”

9. Moreover, as far as receipt of summons by ‘Speed Post’ is concerned, the same, in any case, is admitted. The appellant appeared before the Joint Registrar on 24.08.2017. In our view, if there were any pages missing from the paperbook supplied alongwith the summons, grievance should have been made before the JR’s court on 24.08.2017 itself. We go a step further to say that the appellant ought to have been conscious of the fact that the time would not be extended in a commercial matter as a right; and it was open to the appellant to have filed a written statement, reserving its right to amend or add to the written statement in light of two pages having allegedly not been supplied. Even otherwise, we have our reservation that the respondents would not have supplied a complete set of the paper book. Such excuses, in our view, are matters of the past; and have no place in the present state of affairs in relation to litigation procedures and time-frames, after coming into force of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 with the following aims and objectives:

“Statement of objects and reasons

The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall

create a positive image to the investor world about the independent and responsive Indian legal system.

10. In the above view of the matter, the written statement filed much beyond the maximum permissible period of 120 days, the delay cannot be condoned and the time period for filing cannot be extended by the Single Judge; nor can it be extended by this court.
11. In view of the above, the appeal is dismissed, being devoid of any merit.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

OCTOBER 31, 2019/rb