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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 26th August, 2019

+ **CM (M) 1239/2019**

RAVINDER

..... Petitioner

Through: Mr. Satish Kumar Mishra, Advocate.
(M:8860455133)

versus

SUBHASH GUPTA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Petitioner/Defendant (*hereinafter 'Defendant'*) in the present petition has challenged the impugned orders dated 9th January, 2018 and 24th January, 2019. The said two orders, in effect, close the right of the Defendant to file the written statement. The delay in filing of the written statement, according to ld. counsel for Defendant, occurred because of the fact that one of the documents was not supplied by the Plaintiff to the Defendant i.e. bill no.1050 dated 29th March, 2014. The second reason raised for the delay is that the earlier counsel did not diligently prosecute the matter.

2. The Court has heard ld. counsel for the Defendant. A perusal of the orders passed by the Trial Court shows that the first order was passed on 9th January, 2018. Vide the said order an application under Order VIII Rule 1 CPC was considered by the Court. The Trial Court has recorded specifically that efforts were made by the process server to serve the Defendant on two occasions. Finally, the service was effected through affixation. The Ld.

Trial Court comes to the conclusion that service was affected on 9th October, 2017. On 24th October, 2017, the Plaintiff was directed to supply the complete set of documents. The written statement was thereafter, not filed and a simple application was filed stating that some documents were missing. The Ld. Trial Court records as under:

“A perusal of the aforesaid application shows that he has not specified as to which particular document was not supplied to him by the Ld. Counsel of the Plaintiff. The application also does not disclose the period of delay sought to be condoned. Moreover, it does not disclose any justified reason to extend the time to file written statement. The application is vague and general in nature and seems to have been moved in a casual manner. If the service is counted from 09.10.2017, the period of 90 days has already expired. The aforesaid cited judgment seems to be fully applicable in the facts and circumstances of the present case. Therefore, it seems that it is not in the interest of justice to allow the application and hence, the application is dismissed and disposed off accordingly. The right of the defendant to file written statement is struck off. Put up for plaintiff's evidence on 08.05.2018.”

3. Finally, the complete set of documents was only served on 14th November, 2017 and hence the limitation should be counted from that date. On 24th January, 2019 again, the Court considered the application under Order VIII Rule 1 CPC and directed that the written statement cannot be taken on record and dismissed the application. On the same very date, the evidence of PW1 was also tendered. The present petition has now been filed with 106 days' delay in filing and 106 days' delay in re-filing. The order dated 24th January, 2019 is almost 8 months old. The clear strategy by the

Defendant appears to delay the trial in the suit as far as possible. Even if the date of actual service is taken as 14th November, 2017, non-filing of the present petition, when the written statement was not taken on record on the first occasion, is not justified. Almost 18 months have passed since the date of the first order refusing to take the written statement on record. Ld. counsel for the Defendant submits that the recall application was pending and was finally decided only on 24th January, 2019. The same does not give a reason to the Defendant to delay the filing of the present petition. The suit is of 2017 for recovery of a sum of Rs.20,92,748/-. It is a suit based on supply of goods and payment in respect thereof. It is governed by The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. The legal position is now well settled by the Hon'ble Supreme Court in *SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. (Civil Appeal No. 1638/2019, decided on 12th February, 2019)*, that the provisions of Order VIII Rule 1 CPC are compulsory and the outside limit of 120 days is mandatory.

4. The delay in filing of the written statement is thus, not liable to be condoned. In any event, delay in filing of the present petition is also not liable to be condoned. The petition is, accordingly, dismissed. The Defendant would, however, have an opportunity to cross-examine the Plaintiff's witnesses, if not already done. The petition is disposed of in these terms.

PRATHIBA M. SINGH
JUDGE

AUGUST 26, 2019/dk