

\$~31.

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

+ **FAO(OS) (COMM) 219/2019**

% *Date of Decision: 16<sup>th</sup> September, 2019*

**VIVEK KUMAR GAUTAM** ..... Appellant

Through: Ms.Pooja Tandon, Adv.

Versus

**CITI GROUP INC & ORS** ..... Respondents

Through: None.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**J U D G M E N T**

: **D.N. PATEL, Chief Justice (Oral)**

**C.M.No.41191/2019(exemptions)**

Allowed, subject to all just exceptions.

**FAO(OS) (COMM.) 219/2019**

1. This appeal has been preferred by the original defendant No.2 in CS(COMM) No.877/2017 wherein vide order dated 23<sup>rd</sup> August, 2019 (Annexure A-1 to the memo of this appeal), the right to present a written statement in the aforesaid civil suit was closed because of expiry of limitation period of 120 days from the date of service of the summons issued by this Court.

2. Having heard the learned counsel for the appellant and looking to the facts and circumstances of the case, it appears that CS(COMM) No.877/2017 was instituted by respondents No.1 to 4 for the alleged violation of a trademark. The appellant was original defendant No.2.

Summons were issued and were served upon the appellant on 26<sup>th</sup> December, 2018. As per the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 ('CPC'), the period of limitation to file a written statement is 30 days + 90 days. Within the aforesaid time limit, no written statement has been filed by the appellant in the aforesaid civil suit.

3. For ready reference, Order VIII Rule 1 of the CPC reads as under:-

**“1. Written statement.**— The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

*Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”* (emphasis supplied)

4. In view of the aforesaid provision of the CPC, the total time limit to file the written statement is 120 days and since the appellant did not file the written statement within the aforesaid time limit CS(COMM) No.877/2017, the right of the appellant to file the written statement vide impugned order dated 23<sup>rd</sup> August, 2019 was closed. We see no reason to interfere with the order passed by this Court. No error has been committed by the learned Single Judge while passing the order dated 23<sup>rd</sup> August, 2019.

5. It has been held by the Hon'ble Supreme Court in **Civil Appeal No.1638/2019** titled ***SCG Contracts India Pvt. Ltd. v. K.S.Chamankar Infrastructure Pvt. Ltd. & Ors.*** vide judgment dated 12<sup>th</sup> February, 2019 in paragraphs 8 to 11 and 20 as follows:-

“8. The Commercial Courts, Commercial Division and

Commercial Appellate Division of High Courts Act, 2015 came into force on 23.10.2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order V, Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other days, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

9. Equally, in Order VIII Rule 1, a new proviso was substituted as follows:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

10. This was re-emphasized by re-inserting yet another proviso in Order VIII Rule 10 CPC, which reads as under:-

“Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgment a decree shall be drawn up.

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

11. A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

XXX

XXX

XXX

20. Clearly, the clear, definite and mandatory provisions of Order V read with Order VIII Rule 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein.”

*(emphasis supplied)*

6. In view of the aforesaid decision also, we see no reason to extend the time limit to file the written statement in the aforesaid civil suit. The provisions of Order VIII Rule 1 of the CPC, after amendment, is exclusively

clear. No time limit can be extended beyond the total period of 120 days from the date of service of summons issued by the Court for filing of the written statement in a civil suit.

7. In the facts of the present case, after service of summons on 14<sup>th</sup> December, 2018, the appellant did not file the written statement within the limitation period of 120 days. Learned counsel appearing for the appellant submitted that for the period running from 23<sup>rd</sup> December, 2017 to 18<sup>th</sup> March, 2019, the appellant was in judicial custody and the very first appearance was entered by the appellant in the aforesaid civil suit on 26<sup>th</sup> April, 2019. It appears that even thereafter the written statement was not filed by the appellant within the period of limitation period of 120 days.

8. Apart from that, the appellant was an employee of original defendant No.1 and now he has already resigned from the job, as submitted by the counsel for the appellant. The violation of the trademark has been alleged in the civil suit and now the suit has already been decreed vide judgment and decree dated 2<sup>nd</sup> September, 2019. Counsel appearing for the appellant is not pressing the prayer for challenging the judgment and decree dated 2<sup>nd</sup> September, 2019 in this appeal. The judgment and decree passed in CS(COMM) No.877/2017 dated 2<sup>nd</sup> September, 2019 can be challenged by way of Regular First Appeal and the liberty is granted to the appellant to challenge the same in accordance with law.

9. In the present case, we are concerned only with the impugned order dated 23<sup>rd</sup> August, 2019 and for the reasons stated hereinabove, no error has been committed by the learned Single Judge while passing the said order. We are in full agreement with the reasons given by the learned Single Judge. Hence, there is no substance in this appeal in view of the aforesaid provision

of the CPC and also in view of the judicial pronouncement by the Hon'ble Supreme Court.

10. The appeal is accordingly dismissed.

**C.M.No.41190/2019** (*stay*)

In view of the aforesaid order in the appeal, this application stands disposed of.

**CHIEF JUSTICE**

**C.HARI SHANKAR, J**

**SEPTEMBER 16, 2019**

*'anb'*