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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 179/2019 and C.M.No.41721/2019 (Stay)**
TATA CAPITAL HOUSING FINANCE LIMITED Appellant
Through: Mr.Manish Sharma, Advocate.

versus

**M/S SHRI CHAND CONSTRUCTION & APARTMENT PRIVATE
LIMITED & ANR Respondents**
Through: Mr.Rajat Aneja, Ms. Bhawana
Pandey and Ms.Jia Kapur, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **27.09.2019**

1. The present appeal is directed against the order dated 25th November, 2018, striking off the Appellant/Defendant's defence in a suit CS(OS) No. 179/2019 filed by the Respondent/Plaintiff for recovery of a sum of Rs.3.40 crore.

2. The reason for the defence being struck off was that according to the learned Single Judge the written statement was not filed within ninety days of the service of summons on the Defendant, which was taken to have been effected on 26th April, 2019.

3. The case of the Appellant/Defendant is that when the summons were served on it on 26th April, 2019, three pages of the plaint were missing,

certain documents accompanying the plaint were not served and the accompanying applications were also not found. Learned counsel for the Appellant/Defendant draws the attention of the Court to the proceedings dated 20th May, 2019 before the Joint Registrar (Judicial) [JR] of this Court. It is seen that on that date none appeared for Plaintiff. Mr. Rajat Aneja, learned counsel for the Plaintiff/Respondent states that since the JR before whom the case was listed was on leave it was shifted to another JR and, therefore, the Plaintiff/Respondent could not appear.

4. Be that as it may, the proceedings of 20th May 2019 reveal that learned counsel for the Appellant/Defendant (who incidentally did not give his appearance on that date) did inform the JR that he did not receive the complete set of documents and that certain pages of documents including three pages of the plaint and copies of the IAs were missing. The JR directed the Plaintiff to supply the deficient copies within a week against due acknowledgement.

5. When the matter was listed next before the JR on 1st August 2019, appearance was entered both on behalf of Plaintiff as well as the Appellant/Defendant. The position remained the same viz., that the Appellant/Defendant had not yet been supplied the complete set of the plaint with the documents and applications by the Plaintiff.

6. Before the JR, learned counsel for the Plaintiff submitted that since the vakalatnama of the Defendant's counsel was not on record, the complete set could not be served. The counsel for the Appellant/Defendant pointed to the

JR that he has filed his vakalatnama on 17th May, 2019 and even gave the diary number. The JR asked the counsel for the Appellant/Defendant to remove the objections and get the vakalatnama placed on record within two working days. Learned counsel for the Appellant/Defendant informs the court that the vakalatnama has since been traced and is on record.

7. Counsel for the Appellant/Defendant informed the JR on 20th May, 2019 itself that there was an arbitration clause in agreement and that he was proposing to file an application for referring the matter to arbitration. He reiterated this before the JR on 1st August, 2019 as well. Although no such application had been filed till then, it now transpires that the application under Section 8 of the Arbitration and Conciliation Act, 1996 has subsequently been filed by the Appellant/Defendant on 20th August 2019, one day before the matter was taken up by the learned Single Judge. This explains why the learned Single Judge did not find the said application on record since it was yet to be numbered. The Court is now informed that the said application has since been listed before the learned Single Judge and is now coming up from 1st October, 2019.

8. In the circumstances outlined herein before, the Court is of the view that the Appellant/Defendant was indeed not served with the complete copies of the plaint and the documents even as of 1st August, 2019. Mr. Aneja seeks to explain that the counsel for the Plaintiff was unable to ascertain who the counsel for the Defendant was since the vakalatnama was not on record. To the Court it appears that the fact that the vakalatnama was filed on 17th May, 2019 cannot be disputed. For some reason it may not have been on record.

However, the fact remains that even as of 1st August, 2019 the complete copy of the Plaint, documents and the applications were not served on the Defendant. On 1st August, 2019 there was a specific direction of the JR to serve him the complete copy during the course of the day but that was not complied with. The fact remains that even on 21st August, 2019 before the learned Single Judge the Plaintiff did not serve on the Appellant/Defendant, although the counsel was very much present, a complete copy of the plaint.

9. In the circumstances the Court is of the view that the limitation period of 90 days could not be said to have begun on 26th April, 2019 since on that day admittedly a complete copy of the plaint was not served on the Defendant. Consequently, the question of the striking off the defence of the Defendant and subjecting him to cost of Rs.1,00,000/- for accepting the written statement, as has been directed in the impugned order, did not arise. The Court accordingly sets aside the impugned order dated 21st August, 2019 of the learned Single Judge in so far as it strikes off the defence of the Defendant and directs that the written statement would be taken on record only subject to payment of Rs.1,00,000/- as costs.

10. Learned counsel for the Appellant/Defendant states that after the impugned order of the learned Single Judge he applied for and obtained a certified copy of the plaint on 4th September, 2019. He undertakes to file the written statement positively on or before 11th October, 2019, with an advance copy to the learned counsel for the Plaintiff. It is made clear that no further time beyond 11th October 2019 would be granted to the Appellant/Defendant for this purpose. The written statement if filed by the

above date will be taken on record.

11. The matter be listed before the JR on the date already fixed, i.e. 15th October, 2019 on which date instead of proceeding with the recording the evidence the JR will ensure completion of pleadings and place the matter for further steps before the Court of the learned Single Judge.

12. The appeal and application are disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 27, 2019

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