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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1608/2018, CAV 1221/2018
& CM APPL. 54608-54609/2018
OSHINO DURGS PVT LTD Petitioner
Through Mr. Rabindra Tiwari, Mr. Sharad
Saxena, Advs.
versus

M/S FEEZO CHEM & ANR Respondent
Through Mr. D.K. Yadav, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **30.01.2019**

CAV 1221/2018

Learned counsel for the respondent / caveator has been heard.

The caveat stands discharged.

CM APPL. 54608/2018 & CM APPL. 54609/2018

Exemptions are allowed subject to all just exceptions.

Applications are disposed of.

CM(M) 1608/2018

Vide the present petition, the petitioner assails the impugned order dated 07.02.2018 and the order dated 01.11.2018 consequential thereto on a review application filed by the petitioner herein before the learned Trial Court in the proceedings in TM No. 167/17 and vide order dated 31.10.2017 on the presence of the petitioner herein, arrayed as the defendant to the said

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suit, an application filed by the defendant i.e. the petitioner herein seeking supply of the legible copies of certain documents was allowed with the plaintiff having been directed to supply the legible copies of documents as mentioned in the application and the matter was thus renotified for filing of the written statement and settlement, if any on 07.02.2018. Vide order dated 07.02.2018, it is indicted that submissions were made on behalf of the petitioner that the written statement had been filed on 31.01.2018 alongwith an application under Order 8 Rule 1 r/w Section 151 CPC seeking condonation of delay qua which it was submitted on behalf of the plaintiff that there was no reason put forth seeking condonation of delay in filing the written statement beyond the period of 30 days from the date when the deficient copies of the plaint and other documents were supplied to the learned counsel for the defendant, which were stated to have been supplied on 21.11.2017 with the written statement having been filed on 31.01.2018.

Vide the impugned order dated 07.02.2018, it having been observed to the effect that no explanation had been given for filing the written statement on 31.01.2018 within the stipulated period of 30 days of supply of legible documents on 21.11.2017, the submissions made on behalf of the defendant were held to be not plausible and the same were held to be vague and the defence of the defendant was struck off with it having been observed that the written statement was kept on record but not taken on record.

It has been submitted on behalf of the petitioner that in view of the directions of the Court dated 31.10.2017, the petitioner had submitted the written statement on 31.01.2018 and would be gravely prejudiced if the written statement is not taken on record.

It is reiterated on behalf of the respondent by the learned counsel for the respondent that in the absence of any explanation and also the factum that the order dated 31.10.2017 did not grant any extension of time beyond a period of 30 days from the date of supply of the legible documents to the petitioner for submission of the written statement, there is no infirmity in the impugned order whatsoever and that no such discretion as sought on behalf of the petitioner ought to be exercised to grant the petitioner an opportunity to place his written statement on record.

On behalf of the petitioner reliance has *inter alia* been placed on the verdict of Hon'ble Division Bench of this Court in ***J.M. Overseas & Ors. Vs. Vijay Kuamr Mangla, II (2007) BC 191 (DB)*** in which case it is indicated vide para 8 thereof that the defendant to the said suit was directed to file the written statement on the date 04.08.2004 and the proceedings dated 04.08.2004 of the learned Trial Court are reflected to the effect : -

“4-8-2004

Pr. : Counsel for the parties.

W/s on behalf of the defendant no.1 to 3 filed. Counsel for defdt. states that it is beyond the period of 90 days and therefore, cannot be taken on record. He intends to move an application in this regard and also wants to cite the law laid down by Hon. Supreme Court. Sometime requested for bringing the case law and to argue the matter.

Learned Counsel for plaintiff however has given an advance copy of the intended application to the other side.

Put up for consideration on the contentions raised on behalf of the plaintiff and also for replication. AD of documents and framing of issues on 10.8.04.”

It is further observed vide paras 9 & 10 of the said verdict in **J.M. Overseas & Ors. Vs. Vijay Kuamr Mangla (supra)** :-

“9. On 4.8.2004, the written statement was filed. However, the learned Counsel appearing for the plaintiff in the suit took an objection that the written statement was filed beyond the period of 90 days and he proposed to move an application which was subsequently filed. This application was filed and arguments were heard on 10.8.2004, 10.9.2004, 20.9.2004, 11.10.2004 and the same were concluded on 10.11.2004. The case was fixed for orders, order was made on 4.12.2004 resulting in passing of a final decree under the provisions of Order 8 Rule 1 of the Code of Civil Procedure. It is evident from the facts emerging from the record that the Court had passed a specific order on three different occasions for filing the written statement. Once the Court had granted time to file the written statement, the presumption would be in favour of the order of the court rather than against it, particularly when the said order was not objected to by the plaintiff, and in fact, he conceded to those orders. The plaintiff in the suit did not assail those orders

before any higher Court. In other words, in respect of these orders, the parties accepted and acted thereupon, the acquiescence would be an inevitable element to be inferred from the record. The plaintiff having consented to/having not objected to the orders of the Court passed earlier, he cannot be permitted to take advantage of his own behaviour and consent, that too opposed to the spirit of the order of the Court. In the application filed by the plaintiff under Order VIII Rules 1 and 10, it was stated that the written statement could not be taken on record later than 90 days from the date of service of summons and the defendants had no right to file the written statement, thus, a decree in terms of the above provisions should be passed. This application was prepared and filed on 4.8.2004 while the written statement had already been filed in furtherance to orders of the Court dated 14.7.2004. No objection was raised on behalf of the plaintiff, though they were present at the time of passing of the order granting extension of time for filing of the written statement. The provisions of Order VIII, Rules 1 and 10 read together are directory in the sense that compliance to them may be essential but they in no way divest the Court of its inherent power or jurisdiction to take a written statement on record beyond the period of 90 days, of course for good and valid reasons. In the present case there was no occasion for the defendants to explain the delay in filing

the written statement and file any application in that regard as the written statement was filed within the extended time allowed by the Court by its specific order.

10. The reasons stated by the Court is "that nothing is convincing on part of the defendants to show what prevented them from filing the written statement within the period of 90 days". Once, the Court itself had granted extension of time to file the written statement there was no occasion for the Court to recall those orders without there being any application on record. Actus curiae neminem gravabit is a settled maxim of law. Once the defendants had been given any benefit under the orders of the Court, the same could not be withdrawn except by due process of law. The order of the Court granting extension of time for filing the written statement cannot be termed as Extra jus or beyond the jurisdiction. Thus, the analysis done by the learned Trial Court is not in consonance with the settled principles of law in terms of the judgments of the Supreme Court as well as this Court. One of the basic purpose of these statutory provisions is expeditious disposal of the cases and to prevent delay being caused by unscrupulous defendants. Once a date was given by the Court for filing of the written statement much beyond the period of 90 days with the consent of the plaintiff, no fault can be found with the exercise of such

discretion by the learned Trial Court. Thereafter, the case remained pending for arguments on the said application for a considerable time. This itself is contrary to the scheme of these amended provisions. Resultantly, we are not able to find any merit in the contentions raised on behalf of the respondents in the appeal.”

with it having been observed to the effect that the orders of the Trial Court having given time to file the written statement by a particular date, there can be no occasion for the Court to recall those orders in the circumstances of the case.

Apart from the reliance that has been placed on behalf of the petitioner on the verdict of the Hon’ble Division Bench of this Court relied upon, it is essential to observe that the complete set of the plaint and the legible documents were supplied to the defendant i.e. the petitioner herein on 21.11.2017 and the written statement is indicated to have been filed on 31.01.2018. In the circumstances, the exercise of discretionary could have been made by the learned Trial Court taking into account the factum that the proceedings had been renotified vide order dated 31.10.2017 for filing of the written statement and settlement, if any on 07.02.2018. That such discretion can be exercised is already well settled in as much as the written statement has clearly been filed within the extended discretionary period of 90 days from the date of the deficient copies of the plaint and other documents were supplied to the learned counsel for the defendant.

Taking the same into account, the impugned order dated 07.02.2018
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striking off the defence of the petitioner is set aside subject to the payment of costs of Rs.5,000/- by the petitioner to the respondent. The payment of costs be made by the petitioner to the plaintiff on the date 01.02.2019 before the learned Trial Court, which is then directed to proceed further in accordance with law.

The petition is disposed of.

Copy of the order be given *Dasti*, as prayed.

ANU MALHOTRA, J

JANUARY 30, 2019/MK