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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) 2/2020

ESHA GUPTA

..... Appellant

Through: Mr. Vivek Sood, Senior Advocate
with Mr. Ashim Shridhar and Ms.
Niyati Patwardhan, Advocates.

versus

ROHIT VIG

..... Respondent

Through: Ms. Manmeet Arora, Mr. Vedanta
Verma, Mr. Akhil Kumar Gola, Ms.
Samapika Biswal and Mr. Tushar
Saizal, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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28.01.2020

1. The present appeal, by the Defendant in CS(OS) 357/2019, is directed against the impugned order dated 26th November, 2019 passed by the learned Single Judge in I.A. 16582/2019 under Order VIII, Rule 10 of the Code of Civil Procedure, 1908 ('CPC'), effectively closing down the right of the Appellant/Defendant to file a written statement on the ground that despite 120 days having expired since the date of the service of summons upon her, she had not filed a written statement.

2. This Court has heard the submissions of Mr. Vivek Sood, learned counsel appearing for the Appellant/Defendant and Ms. Manmeet Arora, learned counsel appearing for the Respondent/Plaintiff.

3. At the outset, it requires to be noticed that the suit before the learned Single Judge was not a commercial suit, within the meaning of the Commercial Courts Act, 2015 ('CC Act'). The filing of the pleadings in the said civil suit was governed, *inter alia*, by the Delhi High Court (Original Side) Rules, 2018. Rule 4 in Chapter VII of the said Rules deals with extension of time for filing written statement, and reads as under:

“4. Extension of time for filing written statement:

If the Court is satisfied that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within 30 days, it may extend the time for filing the same by a further period not exceeding 90 days, but not thereafter. For such extension of time, the party in delay shall be burdened with costs as deemed appropriate. The written statement shall not be taken on record unless such costs have been paid/ deposited. In case the defendant fails to file the affidavit of admission/ denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted. In case, no written statement is filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement.”

4. In the present case, it is not in dispute that the Appellant was served with a notice in the suit on 24th July, 2019. It is, therefore, not in dispute that despite the lapse of 120 days, on 21st November, 2019, the written statement had not been filed.

5. Mr. Vivek Sood, learned Senior counsel for the Appellant/Defendant, offers, essentially, two reasons for the Appellant/Defendant not being able to file the written statement within the aforesaid period. First, he says that there

were professional engagements that required the Appellant/Defendant to travel abroad frequently during the period in question. He refers to copies of the endorsements on her passport, which have been enclosed with the present appeal. Secondly, he refers to messages exchanged between the Appellant and her counsel, wherefrom it emerges that she was given to understand that settlement talks were in progress, and it was only one day prior to the date on which the matter was to be taken up before the learned Single Judge, i.e. on 25th November, 2019, that she was informed that the Respondent/Plaintiff was neither agreeable to a settlement nor an adjournment.

6. Ms. Manmeet Arora, learned counsel for the Respondent/Plaintiff, submits that this Court has to test the truthfulness of the above submissions. According to her, while there was indeed an attempt to arrive at a settlement prior to 31st July 2019, the talks regarding a settlement fell through before 31st July, 2019 itself. She states that the question of there being such talks thereafter does not arise. It is further pointed out by her that the application by the Respondent/Plaintiff under Order VIII, Rule 10 CPC was filed on 23rd November, 2019 itself. Thus, the Appellant could not have been in any doubt that she was in default as far as the filing of the written statement was concerned.

7. It must be noticed at this stage that the Appellant has also referred to certain instructions given by her to her lawyers regarding the preparation of the written statement. She has *inter alia* averred that “due to one inadvertent reason or the other, the written statement could not be filed.” However, the

Court does not wish to examine this aspect of the matter but would confine itself to examining whether the reasons given by the Appellant/Defendant herein are sufficient for the Court to condone the delay.

8. What weighs with the Court in addition to the documents produced adduced and submissions made, is that her proposed written statement is ready. A copy thereof has been enclosed as Annexure A-16 to the present appeal. In other words, if the present appeal was to be allowed, the Appellant/Defendant is in a position to file her written statement, as she proposes, straightaway, without seeking any further time. The second factor that weighs with the Court is that given the nature of the suit, it would be in fact be in the interest of the Plaintiff to know as to what the stand of the Defendant is, rather than a situation where there is no written statement at all. Thirdly, in the circumstances, the impugned order was passed just five days after the expiry of the deadline to file the written statement, and before the filing of the present appeal, i.e. by 19th December, 2019, the Appellant/Defendant was ready with the proposed written statement. Therefore, the *bona fides* of the Appellant/Defendant, as far as her willingness to file the written statement is concerned, are evident. The Court, therefore, refrains from expressing any opinion on the truthfulness or otherwise of the other assertions of the Appellant.

9. This Court is also guided by the recent decision dated 20th January, 2020 of the Supreme Court in Civil Appeal No. 433/2020 (***Desh Raj v Balkishan***), where, in dealing with the issue of the condonation of delay in filing written statements that do not fall within the ambit of the CC Act, it

was observed in paragraph 16 as under:

“16. However, it would be gainsaid that although the unamended Order VIII Rule 1 of CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweet-will and/or to prolong the lis. The legislative objective behind prescription of timelines under the CPC must be given due weightage so that the disputes are resolved in a time-bound manner. Inherent discretion of Courts, like the ability to condone delays under Order VIII Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay.”

10. In the peculiar facts referred to above, and without expressing any view on the correctness or otherwise of the assertions of the Appellant/Defendant, vis-à-vis, the conduct of her counsel, this Court considers it appropriate to put the Appellant/Defendant to terms while permitting her to file the proposed written statement, as enclosed with the present appeal as Annexure A-16.

11. Accordingly, the impugned order dated 26th November, 2019 of the learned Single Judge, closing the right of the Appellant/Defendant to file a written statement, and allowing I.A. 16582/2019 is hereby set aside, subject to the Appellant/Defendant paying the Respondent/Plaintiff a sum of Rs. 25,000/- as costs on or before 1st February, 2020, and filing the proposed written statement along with the proof of payment of cost on or before the aforesaid date.

12. The matter will now proceed before the learned Single Judge in

accordance with law from the stage of the filing of the written statement by the Appellant/Defendant.

13. The appeal is allowed in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 28, 2020
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