

\$~39

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 9th November, 2020

+ **CM (M) 554/2020 & CM APPLs.28406/2020, 28407/2020**
NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Ms. Namrata Mukim, Standing
Counsel with Ms. Garima Jindal,
Advocate and Mr. Y.P. Singh, AE,
KBZ.

versus

RAJEEV SEHGAL Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present petition challenges the impugned order dated 19th October 2020 passed by the District Judge (Commercial Court), Central District, Tis Hazari Courts, by which the written statement which was filed by the Petitioner-Corporation was not taken on record.
3. The order arises out of a suit for recovery filed by the Plaintiff/Respondent for sum of Rs. 10,42,39/-. As per the summons placed on record, the same was served upon the Corporation at S.P. Zone, on 8th November 2019, however, the correct zone was the Karol Bagh Zone. The written statement was filed on 3rd September 2020, along with an application for condonation of delay. The Id. District Judge however, held that the 120-day period had lapsed, and it had no power to condone the same.
4. Ms. Namrata Mukim, Id. Counsel for the Corporation, submits that the time when the summons was received in the Karol Bagh Zone was much later,

and because of the pandemic and lockdown, the Corporation should be allowed to file its written statement.

5. In view of the judgments of the Hon'ble Supreme Court in ***SCG Contracts India Private Limited v. K.S. Chamankar Infrastructure Private Limited and Ors.*** [(2019) 12 SCC 210], read with ***Sagufa Ahmed and Ors. v. Upper Assam Plywood Products Pvt. Ltd. and Ors.*** [Civil Appeal 3007-08 of 2020], the period of 120 days, to file the written statement, is not extendable. Moreover, the benefit of the pandemic and the lockdown can only be given if the initial 30-day period falls after the lockdown commenced, and not otherwise. The relevant portion of ***SCG Contracts (supra)*** is set out below:

“8. 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.

xxxx

10. Several High Court judgments on the amended Order VIII Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the Code of Civil Procedure will have to be held to be mandatory. [See Oku Tech Private Limited v. Sangeet Agarwal and Ors. by a learned Single Judge of the Delhi High Court dated 11.08.2016 in CS (OS) No. 3390/2015 as followed by several other

judgments including a judgment of the Delhi High Court in Maja Cosmetics v. Oasis Commercial Pvt. Ltd.]

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order VIII Rule 1 on the filing of written statement Under Order VIII Rule 1 has now been set at naught.”

6. The Supreme Court has recently reiterated this principle in the judgment of **Sagufa Ahmed (supra)**, the relevant portion of which reads as under:

“19. But we do not think that the Appellants can take refuge under the above order. What was extended by the above order of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”

7. This Court has also considered the same question in **C.R.P. 63/2020 Shyam Sunder v. Shikha Arora & Anr.**, wherein vide order dated 23rd September, 2020, it has been held that the provisions of Order VIII CPC provide a complete timeline and scheme for filing of the written statement.

The non-filing of the written statement within the time prescribed has consequences in law for parties. It has been further held that even the lockdown due to the pandemic can only extend the original period of limitation and not the period up to which delay can be condoned.

8. Ld. counsel for the Petitioner relies upon an order passed by this Court in *North Delhi Municipal Corporation v. M/S Dhingra Construction, CM (M) 136/2020* wherein, the Court had permitted the written statement to be taken on record, subject to imposition of costs. A perusal of the said order shows that the written statement in the said case was filed within the 120 day period and not beyond 120 days. Hence the said order would have no application in the present case.

9. Therefore, in view of the above settled position in law, the impugned order does not deserve to be interfered with in the present case. The view of the Trial Court is correct and in accordance with law.

10. Needless to add that, though the Corporation may not have filed its written statement, it can be allowed to join the proceedings here onwards. Non-filing of a written statement would not deprive the Corporation of its right to join the proceedings including cross examination of witnesses of the Plaintiff and addressing final arguments.

11. The petition, along with all pending applications, is disposed of in these terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 9, 2020

Rahul / A