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

Date of Decision: 5th February, 2020

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CM (M) 136/2020

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms. Namrata Mukim, Standing
Counsel with Mr Manoj and Mr. R.
K. Sethi, AEs from Keshopuram Zone
in person. (M:9899106515)

versus

M/S DHINGRA CONSTRUCTION COMPANY Respondent

Through: Mr. S. K. Singh and Mr. Arunav
Tewari, Advocates. (M:7683051144)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 4637/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 136/2020

2. A suit for recovery was filed by M/s. Dhingra Construction Company- Respondent/Plaintiff (*hereinafter* 'Plaintiff') against North Delhi Municipal Corporation (*hereinafter* 'Corporation') as Defendant No.1 and the Executive Engineer of the Corporation as Defendant No.2. It was pleaded by the Corporation that due to change of panel of counsels etc. and various other reasons the written statement on behalf of the Corporation was delayed. However, the trial court, has vide the impugned order dated 24th January 2020, refused to take the written statement on record.

3. Ld. counsel for the Corporation submits that the Trial Court has failed

to consider that insofar as the Defendant No.2 was concerned, the service of summons was effected only on 12th October, 2019. Accordingly, she submits that the written statement was within time and ought to have been taken on record.

4. Summons were issued on 17th September, 2019. The Defendant No.1 was served on 23rd September, 2019 and the Defendant No.2 - Executive Engineer was served on 12th October, 2019. The returnable date for the summons was fixed as 24th January, 2020. On the said date, when the written statement was tendered before the Court, the Court refused to take the same on record on the ground that the written statement was beyond the period of 120 days. Considering the fact, that summons were served upon the Defendant No.2 i.e. the Executive Engineer of the Corporation, only on 12th October 2019, the written statement, which was tendered on 24th January 2020, is directed to be filed on record subject to payment of Rs.10,000/- as costs to be paid to the Plaintiff. The costs shall be paid on or before the next date before the Trial Court i.e. 10th February, 2020, subject to which the written statement shall be taken on record. Though this is a commercial suit, the written statement is being directed to be taken on record because the main Defendant i.e. Executive Engineer of the Corporation, who had to file the written statement, was served on 12th October, 2019 and the returnable date i.e. 24th January, 2020 when the matter was listed, was within 120 days.

5. It is noticed in this case, that the summons in this suit were issued on 17th September, 2019. The said order reads as under:

“Present :-Ms. Shwenka Tripathi, Counsel for the Plaintiff

*Issue summons for settlement of issues of recovery suit upon the O/P on filing of PF/RC. Steps taken through all modes including courier and speed post.
Put up for further proceedings on 24.01.2020.”*

6. A perusal of the above order shows that the order issuing summons does not give any timelines for filing of written statement, though the same is contained in the Code of Civil Procedure.

7. It has been noticed that usually, in trial courts, in most matters, the order issuing summons does not specify the time line for filing written statement. The summons also does not specify the outer time limits. The returnable date is then fixed beyond the 90 days/120 days period. The usual method of filing in trial courts is to present the pleading on the date when the matter is fixed. Thus, the returnable date plays a crucial role. Litigants who receive the summons and/or the orders, usually are not aware of the timelines and the mandatory nature of the 120 days’ period for filing of written statement in the case of commercial suits, and in several cases, the returnable date after issuance of summons is beyond 120 days.

8. This Court, in ***Sudhakar Singh & Anr. v. M/s Webkul Software Pvt. Ltd. [CM (M) 50/2020, Decided on 28th January, 2020]***, has held as under:

“4. A perusal of the summons which were issued shows that in the said summons, there is no mention of the Defendants being called upon to file the affidavit of admission/denial along with the written statement. The summons were also not issued as per the format for commercial disputes notified by Delhi High Court on 27th November, 2015, which may be due to the fact that the said format applies only to the Original Side of the Delhi High Court. The summons in the district courts, insofar as they concern the Commercial Courts

and commercial disputes, would be required to be amended in accordance with the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 (“Commercial Court Act, 2015”). Moreover, under Order VIII CPC as amended by the Commercial Courts Act, 2015 filing of the affidavit of admission/denial as applicable to Commercial Courts, is not compulsory. The filing of the affidavit of admission/denial has been made compulsory only in the Delhi High Court (Original Side) Rules, 2018. Thus, striking off the defence, despite the written statement being placed on record, on the ground that the affidavit of admission/denial was not filed is not tenable. The same is accordingly set aside.”

In the above judgement, directions were issued to modify the format of summons to be issued by the trial courts. In the present case, further directions are issued in respect of the orders issuing summons and the returnable date thereof.

9. Till the time the format of summons is suitably modified, the following directions are issued in general to civil courts including commercial courts dealing with suits.

- i. In the order issuing summons, the timelines for filing of written statement shall be specified. In commercial suits the fact that the 120 days’ period is mandatory and no extension can be granted, would also be mentioned in the order. A copy of the order should accompany the summons.
- ii. To the extent possible, the Trial Court shall make an endeavour to make returnable dates in such suits well within the 90 days’ or 120 days’ period depending upon whether the suit is non-commercial or

commercial suit. This would ensure that the litigants are not faced with a *fait accompli* when they appear on the first returnable date after the order whereby summons are issued.

10. A copy of this order be circulated by the worthy Registrar General, to all the courts including commercial courts, civil courts, District courts etc., where civil suits are filed, through the District Judges of all districts, in order to ensure that timelines for filing written statement, as extracted above, are incorporated in the orders issuing summons. Copy of this order may also be circulated to all the Bar Associations.

11. List before the Trial Court on the date fixed i.e. 10th February, 2020.

12. The petition is disposed of in the above terms. Copy of this order be given *dasti* under signature of the Court Master.

FEBRUARY 05, 2020/dk

**PRATHIBA M. SINGH
JUDGE**