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

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Judgment delivered on: 12.11.2020

+ CM(M) 493/2020

SH. SIKENDER

..... Petitioner

versus

CROMPTON GREAVES CONSUMER ELECTRICALS
LIMITED & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Chander Agarwal, Advocate.

For the Respondent: Mr. Anmol Saxena, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM(M) 493/2020 & CM APPL.25043/2020 (stay)

1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 05.03.2020 of the Trial Court, whereby, the written statement sought to be filed by the petitioner has been struck off the record on the ground that the written statement was filed after 120 days.
3. Subject suit for permanent injunction for passing of and infringement of trademark was filed by the respondent on 24.09.2019. On 15.10.2019, the suit was taken ex-parte prior to the issuance of summons by the Trial Court. The Trial Court appointed a Local Commissioner to

inspect the premises of the petitioner and also directed issuance of summons returnable for 05.03.2020. It was directed that copy of the order be provided *dasti* to the Local Commissioner.

4. On 05.03.2020, when the petitioner entered appearance and filed his written statement, the same was not taken up on record on the ground that the summons of the suit were delivered to the petitioner on 18.10.2019 and since 120 days had elapsed, the written statement could not be taken on record.

5. It is the case of the respondent that when the Local Commissioner visited the premises of the petitioner, the Local Commissioner delivered a copy of the order dated 15.10.2019 along with paper book of the suit to the petitioner. Accordingly, the petitioner was deemed to have been served with the summons on 18.10.2019.

6. The case of the petitioner is that no summons were ever served on the petitioner and petitioner was only provided with a copy of the order and the paper book of the suit and since the summons had never been served, the time to file the written statement would not commence.

7. In view of the above contentions, a report was called for from the learned District Judge with regard to the issuance and service of the summons. Report has been received from the District Judge (Commercial Court) dated 20.10.2020. The Court has reported that by order dated 15.10.2019, summons of the suit were directed to be issued. The Local Commissioner executed the commission on 18.10.2019 and on 02.11.2019, counsel for the respondent/plaintiff filed his affidavit of service wherein it was stated that he collected *dasti* summons and served the same upon the petitioner on 18.10.2019 which was duly acknowledged. It is stated that on

the basis of the affidavit of service, summons were presumed to have been delivered on the petitioner on 18.10.2019.

8. The Trial Court has recorded that perusal of the judicial record reveals that no served summons were filed by the counsel for the respondent along with affidavit of service. In fact, no process fee had been filed by the plaintiff/respondent and summons were never issued to the petitioner through official process serving agency.

9. Learned counsel for the respondent submits that process fee had been filed.

10. However, the report of the Trial Court is that the summons were never issued. Since the summons were never issued to the petitioner, the time for the petitioner to file the written statement within the statutory period would not commence till service of summons.

11. Order V rule 10 Code of Civil Procedure stipulates that service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the court.

12. Order VIII rule 1 Code of Civil Procedure stipulates that the Defendant shall, within 30 days from the date of service of the summons on him, present a written statement of his defence.

13. Since the summons were never issued by the court and the petitioner was never served with the summons of the Suit, it cannot be held that the petitioner was deemed served on 18.10.2019 with the summons of the Suit

and as such, the written statement which was tendered on 05.03.2020 was beyond time.

14. In view of the above, the impugned order dated 05.03.2020 cannot be sustained and is, accordingly, set aside.

15. The written statement sought to be filed by the petitioner is, accordingly, directed to be taken on record of the Trial Court. After taking the written statement on record, the Trial Court shall thereafter proceed in accordance with law.

16. Petition is, accordingly, allowed in the above terms.

17. Copy of the Judgment be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

NOVEMBER 12, 2020
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SANJEEV SACHDEVA, J

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