

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

% **Date of decision: 23rd August, 2021**

+ **CM(M) 188/2021 & CM No. 11815/2021 (for stay)**

NORTHERN RAILWAY GENERAL MANAGER Petitioner

Through: Mr. Himanshu Upadhyaya Advocate

Versus

RAITANI ENGINEERING WORKING P. LTD..... Respondent

Through: Mr. Gagan Gupta, Advocate

CORAM:

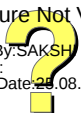
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (ORAL)

[VIA VIDEO CONFERENCING]

1. The present petition under Article 227 of the Constitution of India impugns the order dated 06th February, 2021 passed by the District Judge, Commercial Court-5, Tis Hazari, whereby the application under Order 8 Rule 1 of the Civil Procedure Code (CPC), 1908 filed by the petitioner/defendant was rejected and the written statement filed by the petitioner/defendant was ordered not to be taken on record.
2. The present petition was earlier dismissed by this Court vide order dated 05th March, 2021, however, upon review being filed against the said order by the petitioner, the said earlier order dated 05th March, 2021 was recalled and notice of this petition was issued to the respondent and stay of proceedings in the suit was ordered.



3. The respondent/plaintiff had filed the commercial suit, from which the present petition arises, on 14th August, 2020 and summons were ordered to be issued to the petitioner/defendant on 17th August, 2020 for 17th October, 2020. The petitioner/defendant failed to file the written statement within the period of 30 days and therefore, filed an application under Order 8 Rule 1 of the CPC seeking condonation of delay in filing written statement. The said application was rejected by the impugned order on the ground that the petitioner/defendant failed to show sufficient cause for delay in filing of the written statement within the prescribed period of 30 days.

4. I have heard the counsel for the parties. From the record of the case, it appears that there was some dispute with regard to manner of service of the summons of the suit on the petitioner/defendant – whether the summons were served at the correct address or not, whether the summons could be served on the standing counsel of the petitioner/defendant in High Court, when the present suit was filed before the Commercial Court, District Court. Be that as it may, even as per the admitted case of the petitioner/defendant, the written statement has not been filed within 30 days from the date of receipt of summons. But the written statement has been filed within the condonable period of 120 days as provided in second proviso to Order 8 Rule 1 of the CPC, as applicable to commercial suits.

5. The petitioner has given reasons for not filing the written statement within the prescribed period of 30 days in the application filed by it for extension of time. I have perused the application filed by the petitioner/defendant and the reasons given therein for delay in filing the written statement. As per the petitioner, initially the service of the summons was not made upon appropriate office of the petitioner/defendant and



summons were received by the petitioner/defendant only on 1st October, 2021. The written statement could also not be filed in a timely manner as the entire record of the present case was lying in the office of another Advocate who was contesting another case between the same parties before this Court. The record could not be obtained from him as he was outstation on account of COVID-19 pandemic.

6. In my view, so long as the delay in filing of the written statement is within the overall condonable limits prescribed under Order 8 Rule 1 of the CPC, the Court should not take a hyper technical view in not condoning the delay in filing the written statement, as vital rights of parties are involved and it would be in the interest of justice if the matter is decided on merits. Of course, while condoning such delay, the Court is entitled to do it upon payment of cost.

7. In my considered view, the present case is a fit case for condoning the delay in filing the written statement subject to payment of costs to the respondent/plaintiff. Grave prejudice would be caused to the petitioner in case it is not allowed to file written statement. The petitioner is a government department and closing of the right to file written statement would also result in prejudicing the public interest, the suit in question being a recovery suit for recovery of Rs. 1,85,39,428/- from the petitioner/defendant. The prejudice, if any, caused to the respondent in delay to the suit can be compensated by way of costs.

8. Accordingly, the impugned order dated 06th February, 2021 is set aside and the application filed on behalf of the petitioner under Order 8 Rule 1 CPC is allowed and the written statement filed by the petitioner be



taken on record, subject to costs of Rs.20,000/- payable by the petitioner to the respondent.

9. The present petition and the pending application are disposed of.

AUGUST 23, 2021
dk

AMIT BANSAL, J.

