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

Date of decision: 21st December, 2021

+ **C.R.P. 100/2021**

ANNEX DIE CASTING

..... Petitioner

Through: Mr. Subodh Kumar Jha, Advocate
(M: 9971817545)

versus

SAMIR KUMAR PAL

..... Respondent

Through: Ms. Kushika Chachra, Advocate

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

CM APPL. 46572/2021 (for exemption)

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

CRP 100/2021 & CM APPL. 46571/2021 (for stay)

3. This is a petition challenging the impugned order dated 4th March, 2021 passed by the *Ld. Principal District & Sessions Judge, South West District, Dwarka Courts, New Delhi* (hereinafter “trial court”) in *CS No. 112/2019* titled *Samir Kumar Pal v. Annex Die Casting* vide which the written statement of the Petitioner/Defendant (hereinafter “Defendant”) has been struck off the record by the trial court.

4. The background of the case is that the suit was filed by the Respondent/Plaintiff (hereinafter “Plaintiff”) seeking recovery of Rs. 1,21,355/- with pendent lite and future interest @24% per annum till the date of realisation along with cost of the suit. Initially, summons were issued to the defendant in the suit on 24th January 2019 but since the process fee

was not filed by the Plaintiff, one more opportunity was granted to the Plaintiff by the trial court vide order dated 20th April, 2019, in the interest of justice for taking steps and file process fee. The Defendant is stated to have been served on 18th May, 2019. However, the defendant did not appear on the next date of hearing, i.e., 29th May, 2019 and last opportunity was granted by the court to the Defendant to appear before the court and file reply. An application for appearance was filed on 4th June 2019 by the Defendant presuming the suit to be under Order XXXVII CPC. On 3rd August 2019 it was clarified by the court that the suit was an ordinary suit for recovery and last opportunity was granted to the Defendant to appear and file the written statement with advance copy to the opposite party for 26th September 2019. Notably, on the said date i.e., 3rd August 2019, though the counsel for the Defendant had entered appearance, his appearance was inadvertently marked on behalf of the SDMC, which was not even a party to the matter. This error was rectified on 26th September, 2019 and matter was adjourned to 21st November, 2019 for taking on record the written statement. On 21st November, 2019 written statement was filed by the Defendant and a copy of the same was supplied to the Plaintiff. Time was also granted to the Plaintiff to file replication to the same. Ld. Counsel for the Petitioner was present at that hearing when the WS filed by the Defendant was taken on record. The said order reads as under:

“21.11.2019

CS. No.112/19

Samir Kumar Pal Vs. Annex Die Casting

*Present: Sh. Sanjeev Sharma, Ld. Counsel for
plaintiff.
Sh. B.K. Jha, Ld. Counsel for defendant.*

*WS filed on behalf of defendant. Copy of same is supplied.
Replication, if any be filed within 15 days from today.
Put up for framing of issues on 12.12.2019.”*

5. Thereafter, the matter was listed before the trial Court on 12th December, 2019 and 13th February, 2020. However, no objection was taken by the Plaintiff in respect to the belated filing of the written statement by the Defendant. The objection was taken for the first time by the Plaintiff on 17th September, 2020 that the written statement was filed belatedly when the matter was fixed for the framing of issues. On the basis of this objection, an application was filed by the Plaintiff to take the written statement off the record as the same was not filed within the prescribed time envisaged in Order VIII Rule 1. By that time, the pleadings were completed in the matter. By the impugned order, the Court took the written statement off the record after relying on the judgment of the Supreme Court in ***Kailash vs. Nankhu* (2005) 4 SCC 480** as also the judgment of this Court in ***Shyam Sunder vs. Shikha Arora* CRP No. 63/2020**.

6. Counsel for the Defendant submits that the initial misunderstanding was under the impression that the suit was under Order XXXVII and summons for judgment had to be filed by the Plaintiff. As soon as the said impression was corrected by the trial court on 3rd August 2019 and the opportunity was given to file the written statement, the same was filed promptly. He submits that no objection was taken initially by the Plaintiff. It is only almost after a year the objection related to belated filing of the written statement have been raised by the Plaintiff. He further submits that

there was no intention on the part of the Defendant to delay the proceeding before the trial court and the delay in filing written statement deserves to be condoned.

7. On the other hand, counsel for the Plaintiff submits that summons were served on the defendant 18th May, 2019 and the statutory time for filing the written statement expired by the time written statement was filed by the Defendant. There was no application for condonation of delay accompanying the written statement filed beyond the statutorily permissible period under CPC. No explanation was given as to why the delay ought to be condoned. Accordingly, the correct view has been taken by the trial Court striking the written statement filed by the Defendant off the record of the court.

8. This Court has perused the impugned order as also the various orders passed by the trial Court. It appears that there was a genuine misunderstanding on the part of the Defendant that the suit was in fact under Order XXXVII. Thereafter, appearance of the Id. Counsel for the Defendant was wrongly recorded which corrected and on 21st November, 2019 the written statement was finally filed. If the time is computed from the date of service of summons upon the Defendant i.e., 18th May, 2019 the written statement has been filed within a period of six months. Though there is no doubt that the said period is beyond the statutory period provided in the CPC, the judgment of the Hon'ble Supreme Court in ***Kailash vs. Nankhu*** (supra) permits that in exceptional situations, the delay in filing the written statement beyond the statutorily permissible limit can be condoned. The relevant portion of judgment is as under-

“We sum up and briefly state our conclusions as under-

xxx xxx xxx

(v) Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended.”

9. The judgment of the Hon’ble Supreme Court in ***Kailash v. Nankhu*** (*supra*) has been relied upon by this Court in ***Mothers Pride Education Institution Pvt. Ltd. v. Shukla Sehgal***, 283 (2021) DLT 101 wherein it was observed:

“36. Therefore, both in Ordinary Suits and in Commercial Suits, the defendant has to file the Written Statement within 30 days from the date of service of summons on him. In case of his failure to do so, the Court is empowered to allow the defendant to file the Written Statement on such other day as may be specified by the Court, but which shall not be later than ninety days (in case of Ordinary Suit) and one hundred and twenty days (in case of Commercial Suit) from the date of service of summons. The major difference lies thereafter. While in an Ordinary Suit,

even after expiry of ninety days from the date of service of summons, the Court can allow the defendant to file the Written Statement, in Commercial Suits, the Court cannot allow the Written Statement filed beyond one hundred and twenty days to be taken on record.

37. In both Ordinary Suit and Commercial Suit, even while allowing the defendant to file the Written Statement beyond thirty days and within 90/120 days, the Court has to record reasons in writing for the same, and in case of Commercial Suit, impose such costs on the defendant as the Court may deem fit. The submission of the petitioner that the Court has no discretion but to extend the time for filing of the Written Statement, therefore, cannot be accepted. As held by the Supreme Court in SCG Contracts (India) Private Ltd.(supra), period beyond 30 days of service of summons is the grace period which a court is empowered to grant to the defendant, for reasons to be recorded in writing, for filing of the written statement. Such grace period cannot be claimed as a matter of right by the defendant but is at the discretion of the court. The defendant cannot claim extension of period of time for filing of the Written Statement without giving any justified reason for the delay in filing.”

10. In the opinion of this Court, the misunderstanding as to the nature of the suit and the chronology of events in the suit shows that the delay is sufficiently explained. Also, there would be grave injustice caused to the Defendant if the Written Statement is not taken on record. The Defendant was honestly under a mistaken impression that the suit was under Order XXXVII. Furthermore, even after the filing of the written statement, no objection was taken for almost 10 months and the suit had actually proceeded further. The Plaintiff decided to take the objection for the first

time on 17th September, 2020 pursuant to which an application was moved. In the overall facts and circumstances and considering the fact that the present suit is not a commercial suit but is governed by the CPC where the period specified in Order VIII Rule 1 has been clearly held to be directory and not mandatory, the written statement is directed to be taken on record, subject to payment of Rs.7,500/- as costs to the Plaintiff. The costs shall be tendered on the next date before the trial court.

11. The petition is allowed in the above terms. The pending application is also disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 21, 2021

mw/SK