

\$~7 (Appellate)

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

+ CM(M) 851/2019 & CM APPL. 25790/2019

M/S R M GREEN SOLUTIONS PVT LTD & ORS

..... Petitioners

Through: Mr. Amit Wadhwa, Adv.

versus

PANKAJ SINGH RAJPUT

..... Respondent

Through: Mr. S.K. Vashishtha, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

% **22.11.2022**

1. The petitioner is defendant in CS 375/17 (*Pankaj Singh Rajput v. R M Green Solutions Pvt Ltd*) presently pending before the learned Additional District Judge (the learned ADJ). The right of the petitioners to file written statement by way of response to the suit instituted by the respondent was struck off by the learned ADJ *vide* order dated 14th September 2017. An application, by the petitioners, under Order VIII Rule 1¹ of the Code of Civil Procedure, 1908 (CPC), read with Section 5 of the Limitation Act, 1963, for recalling of the said order dated 14th September 2017, was also dismissed by the learned ADJ on 26th April 2019.

2. Both the orders are under challenge in the present petition, instituted under Article 227 of the Constitution of India.

¹ **Written statement.**— The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of

3. Inasmuch as the issue in question is only the right of the petitioners to file written statement, it is not necessary to refer to the details of the dispute between the parties.

4. Petitioners 1 and 2, as Defendants 1 and 2 in the suit, were served with summons, in the suit, on 7th July 2017. Petitioner 3, as Defendant 3 in the suit, was served on 21st July 2017.

5. On 14th September 2017, the learned ADJ, noting that no written statement had been filed by the petitioners till that date, struck off the petitioners' right to file written statement.

6. The petitioners moved an application on 13th November 2017 under Order VIII Rule 1 of the CPC read with Section 5 of the Limitation Act. The application was accompanied by a written statement, purportedly by way of response to the suit instituted by the respondent. The application prayed that the order dated 14th September 2017 *supra* be recalled and the written statement be taken on record.

7. The said application stands rejected by the learned ADJ *vide* order dated 26th April 2019. In rejecting the application, the learned ADJ has observed that there was no satisfactory explanation for the petitioners not filing the written statement within 30 days of receipt of service of summons. The learned ADJ has further faulted the petitioners for having consulted their counsel only in the last week of October 2017. The learned ADJ has also noted that no written statement had been filed by the petitioners even within 90 days of

receipt of summons. On a conjoint consideration of these factors, the learned ADJ has rejected the petitioner's application.

8. As already noted, the petitioner has, by the present petition under Article 227 of the Constitution of India, assailed the aforesaid orders dated 14th September 2017 and 26th April 2019, passed by the learned ADJ.

9. The first issue that arises for consideration is whether the learned ADJ was justified in striking off the defence of the petitioners on 14th September 2017.

10. I have heard Mr. Amit Wadhwa for the petitioner and Mr. S.K. Vashishtha learned Counsel for the respondent.

Analysis

11. Order VIII Rule 1 of the CPC envisages filing of a written statement within 30 days of service of summons in a suit. The proviso to Order VIII Rule 1, which applies in the event of failure, on the part of the defendant, to file written statement within 30 days, mandatorily requires the learned Trial Court to allow the written statement to be filed on such other date as may be specified by the Court, for reasons to be recorded in writing. Such extension cannot, however, continue beyond 90 days from the date of service of summons.

12. The closure of the right of the petitioner to file written statement, in the present case, has effectively reduced the proviso to Order VIII Rule 1 of the CPC to a redundancy.

13. In this context, it is also necessary to refer to Order VIII Rule 10 of the CPC, which reads thus:

“10. Procedure when party falls to present written statement called for by Court.— Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order as it thinks fit relating to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”

14. Order VIII Rule 10 of the CPC envisages a situation in which there is a direction to a defendant in a suit to file a written statement, within a time permitted or fixed by the Court, and the defendant fails to do so. In that event, the Court is empowered to pronounce judgment against the defendant or pass any other appropriate order. It does not, therefore, interfere with the operation of Order VIII Rule 1 of the CPC which applies in the event of normal service of summons in a suit. Inasmuch as there was no direction by the Court to the petitioner to file a written statement in the present case, within any fixed period, Order VIII Rule 10 would not apply.

15. In my considered opinion, the Trial Court could not have struck off the defendant's right to file written statement even when the condonable period as envisaged by the proviso to Order VIII Rule 1 was yet to expire. By doing so, the defendant has been deprived of its right to seek the benefit of the proviso to Order VIII Rule 1. A Court cannot, by order, deprive the litigant of the right to avail the benefit of a statutory provision.

16. Mr. S.K. Vashishtha, who appears for the respondent, submits

that the right of the petitioner to file the written statement was, in fact, struck off because there was non-appearance on his behalf on 14th September 2017.

17. In the first place, the Order dated 14th September 2017 does not strike off the petitioner's right to file written statement because of non appearance. The petitioner's right to file written statement was struck off as the written statement was not filed within 30 days. The submission of Mr. Vashishtha does not, therefore, appear to be factually correct.

18. Even otherwise, the CPC does not envisage striking off of the right to file a written statement merely on the ground of non-appearance of the defendant.

19. In the above circumstances, the decision of the learned ADJ, as contained in the order dated 14th September 2017, to strike off the petitioner's right to file, cannot sustain in law.

20. It has, therefore, to be set aside.

21. In that view of the matter, it is not required for this Court to examine the subsequent order dated 26th April 2019, as that essentially dealt with the prayer to recall the order dated 14th September 2017. The requirement of returning any findings on the order dated 26th April 2019 is, therefore, obviated.

22. The finding of the learned ADJ, in the order dated 14th September 2017, that the petitioner had not filed his written statement

even within the period of 90 days available under Order VIII Rule 1 is also not sustainable. Once the right of the petitioner to file written statement stood struck off, there was no question of the petitioner placing any written statement on record. The petitioner, thereafter, would have to move an application to place the written statement on record. There is no time limit stipulated in the CPC for moving any such application. The petitioner, in fact, moved an application to place the written statement on record on 13th November 2017. The application was accompanied by the written statement.

23. As such, the fact that the application was filed beyond 90 days from the date of service of summons in the suit could not have been a ground to refuse to take the written statement on record.

24. Resultantly, the written statement filed by the petitioners along with their application on 13th November 2017 is directed to be taken on record. Replication, if any, may be filed by the respondent within 4 weeks.

25. The petition stands allowed in the aforesaid terms, with no orders as to the costs.

C. HARI SHANKAR, J

NOVEMBER 22, 2022/AR