

\$~22 (Appellate)

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

+ **CM(M) 992/2022 & CM APPL. 41287/2022**

MR. RAJESH KATHPAL Petitioner

Through: Mr.Varun Gupta, Ms.Simran
Wason and Mr.Harsh Swamy, Advs.

versus

M/S THUKRAL STEEL CORPORATION Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

% **12.10.2022**

1. This petition, under Article 227 of the Constitution of India, assails order dated 6th June 2022, passed by the learned District Judge (Commercial Court) in CS(COMM) 221/2019 (*Rajesh Kathpal v. M/s Thukral Steel Corporation*).

2. The impugned order rejects the application, filed by the plaintiff, under the proviso to Order V Rule 1¹ and the proviso to Order VIII Rule

¹ Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

1² of the CPC, read with Section 151 thereof, to strike off the defence of the respondent-defendant.

3. The issue in controversy being only whether the written statement filed by the respondent was filed within the time, so as to allow it to be retained it on record, it is not necessary to enter into the specifics of the dispute between the parties.

4. The impugned order dated 6th June 2022, discloses that summons, on the suit instituted by the petitioner, were issued to the respondent on 29th July 2019. On 4th December 2019, the respondent contended that it had not received a complete set of the plaint with its annexures. The petitioner undertook to provide a copy of the plaint along with the annexures to learned Counsel for the respondent during the course of the day and, therefore, the respondent was granted 30 days' time from the day when a complete copy of the plaint with annexures was provided by the petitioner, to file written statement.

5. As per the averments in the application of the petitioner, which stands disposed of by the impugned order, the plaint along with all

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documents annexed therewith was supplied by the petitioner to the respondent “for the fifth time” on 13th March 2020. There is, however, no material forthcoming on the record of the present petition to indicate that, at any time, after issuance of summons prior to 13th March 2020, the plaint along with all documents was ever supplied by the petitioner to the respondent.

6. The only endorsement of receipt of the plaint along with documents, by a counsel purportedly on behalf of the respondent, is on 15th July 2019. That endorsement, quite obviously, can be of no relevance in the present case, and of no use to the petitioner, as the time for filing written statement commences only *after* receipt of service of summons on the suit.

7. Service of summons in a suit, in order to constitute a starting point for the time available for filing of a written statement, has to be meaningful service of summons. In other words, the time for filing written statement would commence from the date when the suit along with the documents is provided to the defendant. That, as per the record, even as filed by the petitioner before this Court, took place only on 13th March 2020.

8. Reckoned from 13th March 2020, 30 days for filing the written statement would expire in April 2020. The respondent, thereby, became entitled to the benefit of the order passed by the Supreme Court in ***Re:***

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*Cognizance for Extension of Limitation Suo Motu Writ Petition (C) 3/2020*³ read with the judgments of the Supreme Court in *Prakash Corporates v. Dee Vee Projects Ltd*⁴, *Centaur Pharmaceuticals Pvt. Ltd. v. Stanford Laboratories Pvt. Ltd.*⁵ and *Babasaheb Raosaheb Kobarne v Pyrotek India Private Limited*⁶ all of which have been dealt with by this Court in its recent decision in *Anita Chhabra v. Surender Kumar*⁷, which clearly hold that, where the time period for filing pleadings expired after 15th March 2020, the time stood extended by operation of the orders passed by the Supreme Court in *Re: Cognizance for Extension of Limitation Suo Motu Writ Petition (C) 3/2020*¹ till 28th February 2022. So long as the pleadings were filed prior to 28th February 2022, therefore, they cannot be treated as belated and no occasion arose even for the respondent to tender any application for condoning the delay in filing the written statement.

9. Inasmuch as the written statement was filed prior to 28th February 2022, it has to be treated as having been filed within time applying the judgment of the Supreme Court in the aforementioned decisions.

10. In that view of the matter, no exception can be taken to the decision of the learned Commercial Court to reject the petitioner's

³ 2022 3 SCC 117

⁴ (2022) 5 SCC 112

⁵ MANU/SCOR/03428/2022

⁶ MANU/SCOR/50600/2022

⁷ 2022 SCC OnLine Del 3089

application to strike off the written statement of the respondent from the record.

11. This petition is accordingly completely devoid of merits and is dismissed *in limine* with no order as to costs.

C. HARI SHANKAR, J

OCTOBER 12, 2022/dsn

