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

% Judgment delivered on: 20.01.2023

+ CM(M) 89/2023

PARMESHWAR JANA Petitioner
versus

LAKHAN SINGH Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Prakash Gautam, Adv.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 2947/2023 (Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 89/2023 & CM APPL. 2946/2023

3. Petitioner challenges the order dated 20.10.2022 in CS (COMM.) No. 393/2021 titled as *“Shri Lakhan Singh vs. Shri Parmeshwar Jana”*, passed by the learned Trial Court closing the right to file the written statement since the same was not filed within 120 days as prescribed under the law.
4. Mr. Gautam, submits that the impugned order does not take into consideration the fact that the Hon’ble Supreme Court in *Prakash*

Corporates Vs. Dee Vee Projects Limited reported as (2022) 5 SCC 112 has granted liberty to the similarly situated persons to file their written statement even beyond 120 days as contemplated under the Commercial Courts Act, for the reason of pandemic situation as prevailed in the country.

5. Learned Counsel further submits that the learned Trial Court did not consider the fact that even as on 04.03.2022, it had granted 4 weeks to the petitioner to file the written statement.

6. Learned counsel further submits that the learned Trial Court could and ought to have granted further time to the petitioner to file his written statement even though the period fell beyond the period of 120 days.

7. This Court is heard the arguments addressed by learned counsel Mr. Gautam and finds the same unsustainable and untenable in law.

8. The judgement of ***Prakash Corporates*** (supra) covered a period when the covid pandemic was having its sway all over the country and keeping in view the observation made by the Hon'ble Supreme Court in *Suo Moto* Writ Petition (C) 3/2020 "***In Re: Cognizance for Extension of Limitation***", the Hon'ble Supreme Court in ***Prakash Corporates*** (Supra) held that the same benefit ought to be extended even in the cases of suits falling within the Commercial Courts Act.

9. The other fallacy of the argument is that the time could be extendable even beyond 120 days. This Court in the case of ***Machine Tools Aids India Vs. M/s. GNC Infa LLP & Anr. (Neutral Citation No. 2023/DHC/000160)*** has categorically held that the 120 days period from the date of service of summons upon the defendant is mandatory and cannot be extended further by virtue of any provision of Code of

Civil Procedure.

10. The learned Trial Court has also taken into consideration the judgement rendered by the Hon'ble Supreme Court in *SCG Contracts (India) Private Limited Vs. K. S. Chamankar Infrastructure Private Ltd. & Ors., 2019 (12) SCC 210* whereby it was held that the provision of the Order VIII Rule 1 CPC as applicable to the Commercial Courts are mandatory.

11. In that view of the matter, this Court does not find any jurisdictional error, illegality or material irregularity exercised by the Trial Court while passing the impugned order and same is upheld.

12. In view of the facts of the case, the cost of Rs. 10,000 as imposed upon the defendant is set aside while the operational part of the orders remains untouched.

13. In view of the above, the petition is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J .

JANUARY 20, 2023/ms