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

% Judgment delivered on: 23.01.2023

+ CM(M) 96/2023, CM APPL. 3249/2023 & CM APPL. 3250/2023

ACCURATE FREIGHT LOGISTICS AND ORS Petitioners

versus

AVON LOGISTICS AND SHIPPING

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Gagan Mathur, Mr. Varun Kumar and
Mr. M.D. Jangra, Advocates.

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]

1. Petitioner challenges the order dated 17.11.2022 passed in CS (COMM) No. 328/2022, whereby the learned Trial Court has forfeited the right of petitioners, who were the defendants before it, from filing the written statement on the ground that the delay was more than 150 days.
2. Mr. Gagan Mathur, learned counsel appearing for the petitioners submits that the only manner in which the summons were served upon the petitioner was WhatsApp which was not accompanied with the copy of the plaint or the documents attached therewith.
3. Mr. Mathur submits that in the meanwhile, the petitioner had

applied for a certified copy of the plaint along with the documents which were received on 20.09.2022 and subsequently, the petitioner sought to file its written statement on 17.11.2022.

4. Mr. Mathur submits that if one were to calculate from the date of the receipt of the certified copy of the plaint along with the documents on 20.09.2022, the submission of the written statement of 17.11.2022 though would be beyond 30 days, however, would be within the extendable period of 120 days as prescribed under the amended CPC in terms of the amended Commercial Courts Act, 2015.

5. This Court has considered the aforesaid submissions made by Mr. Mathur, however, is not inclined to interfere with the impugned order for the following reasons :-

(i) It has been admitted by the petitioner that the summons were served through WhatsApp on 18.06.2022 though without the copy of the plaint along with documents.

(ii) The aforesaid submissions does not have any sound factual basis to it for the reason that from 18.06.2022 through till 17.11.2022, the petitioner had neither moved the learned Trial Court nor sent any written request to the counsel for the respondent regarding the non-supply of the plaint along with the documents.

(iii) Having regard thereto, the fact that the certified copy of the plaint and documents was applied for on 18.06.2022 and having received the certified copies on 20.09.2022 is irrelevant for the purposes of reckoning the 120 days, as per the Commercial Courts Act, 2015.

(iv) A perusal of the record also shows that on 19.07.2022, the

petitioner had appeared through counsel and was directed by the learned Trial Court to file its written statement within the prescribed time, if any. Even on 19.07.2022, the petitioner did not make any grievance out of the non-supply or non-furnishing of the plaint along with the documents before the learned Trial Court.

(v) This Court in the case of “*Machine Tools Aids India vs. M/S. GNC Infra LLP & Anr.*,” Neutral Citation No. 2023/DHC/000160, “*Shri Lakhan Singh vs. Shri Parmeshwar Jana*”, “*Royal Golf Link City Projects Pvt. Ltd. & Ors. vs. Times Innovative Media Ltd.*” and *SCG Contracts (India) Private Limited vs. K.S. Chamankar Infrastructure Private Limited & Ors.* 2019 SCC OnLine SC 226, has categorically held that the time period as prescribed under the amended provisions of CPC as per the Commercial Courts Act, 2015, are strict and mandatory and there is no leverage that can be given so far as the outer limit of 120 days from the date of service of summons is concerned.

6. In that view of the matter, this Court is of the considered opinion that the impugned order cannot be interfered with and the same is upheld. The learned Trial Court shall proceed in accordance with law from the stage it was last pending.

7. The present petition along with all pending applications is dismissed with no order as to costs.

TUSHAR RAO GEDELA, J .

JANUARY 23, 2023/nd