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

% Judgment delivered on: 24.05.2023

+ CM(M) 167/2023

MR. RAMESH PAL MEHTA

..... Petitioner

versus

ADANI WILMAR LTD.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sumit Sarna, Advocate.

For the Respondent : Mr. Mayank Gupta, Ms. Srishti Jain
and Mr. Anu Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 5022/2023 (for exemption)

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

CM(M) 167/2023 & CM APPL. 19650/2023 (for stay)

3. Petitioner challenges the order dated 13.07.2022 in CS(COMM.) 354/2021 titled as "*Adani Wilmar Ltd. vs. M/s Marv Global Services*"



whereby the learned Trial Court had dismissed the application under Section 5 of the Limitation Act, 1963 r/w Order VIII Rule 1 of the CPC, 1908 seeking condonation of delay in filing the written statement.

4. Learned counsel appearing for the petitioner submits that, no doubt that the written statement had been filed on 12.07.2022, which was beyond the prescribed period of 120 days so far as commercial suits are concerned. However, learned counsel submits that since the suit for rendition of accounts, as also recovery of the sums due, against the respondent, was filed by the petitioner on 01.04.2021, which was in the knowledge of the respondent, principles of Section 10 of CPC, 1908 would apply to the present suit, which was not considered by the learned Trial Court while passing the impugned order.

5. Learned counsel submits that the counsel for the respondent had, in fact, appeared in the suit filed by the petitioner on 10.11.2021 and keeping that in view, the learned Trial Court ought to have considered, even without formal application being filed under Section 10 CPC, 1908, that the subsequent suit filed by the respondent, wherefrom the present impugned order arises, ought to have been stayed.

6. Learned counsel submits that the learned Trial Court simply ignored the aforesaid submissions and took the written statement of the petitioner off the record as also simultaneously struck off the defence of the petitioner/ defendant.

7. Learned counsel appearing for the petitioner submits that so far as the suit filed on behalf of the respondent is concerned, the summons were issued on 15.12.2021 and the fact that the earlier suit is pending



was neither disclosed in the plaint nor informed by the counsel appearing before the learned Trial Court.

8. Learned counsel also relies upon the judgment of the Supreme Court in ***Prakash Corporates vs. Dee Vee Projects Limited*** reported as (2022) 5 SCC 112 in Civil Appeal No.1318/2022, rendered on 14.02.2022, particularly upon para 26.1, whereby the Supreme Court has observed that procedures are handmade of justice and insofar as the commercial suits are concerned, the Trial Courts ought to also consider other provisions of the Code of Civil Procedure like those of Section 10 of the CPC, 1908.

9. On that basis, learned counsel submits that the learned Trial Court ought to have taken the said observation of the Supreme Court in consideration and condoned the delay in filing the written statement, which was filed on 12.07.2022 and the same ought to have been taken on record.

10. Learned counsel submits that the rejection of the written statement without considering the applicability of Section 10 CPC or the applicability of the judgment of the Supreme Court in ***Prakash Corporates (supra)*** warrants interference by this Court under Article 227 of the Constitution of India.

11. *Per contra*, learned counsel appearing for the respondent vehemently disputes the facts as narrated by the learned counsel for the petitioner.

12. Learned counsel submits that the application under Section 10 of the CPC was filed on 14.09.2022 and not along with the written



statement or even prior to the written statement.

13. Learned counsel submits that having regard to the fact that this issue was never brought to the notice of the learned Trial Court in time, more particularly on 13.07.2022, when the impugned order was passed, it cannot be expected from the learned Trial Court to have considered any of the aforesaid submissions at all.

14. Learned counsel also submits that, admittedly learned counsel for the petitioner had been appearing even prior to 28.05.2022, when the grace period of 90 days granted by the Supreme Court in *Suo Moto Writ Petition (C) No. 3/2020 "IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION"* had also expired, without the petitioner taking steps within time to file its written statement.

15. On that basis, learned counsel submits that the pendency of the suit, even if it is assumed to be prior to the suit filed by the respondent, would not assist or give any credence to the version put across by the learned counsel for the petitioner and the impugned order to that extent is unassailable.

16. Learned counsel submits that the timelines prescribed in the Commercial Courts Act are strict as upheld by the Supreme Court in *SCG Contracts (India) Private Limited vs. K.S. Chamankar Infrastructure Private Limited and Others*, reported in (2019) 12 SCC 210 and also by this Court in *Machine Tools Aids India vs. M/s GNC Infra LLP & Anr.* in CM(M) 1325/2022 rendered on 06.01.2023 and further prays that the present petition be dismissed with costs.

17. This Court has considered the aforesaid submissions of the parties



as also the pleadings and other documents placed on record.

18. At the outset, this Court observes that the admitted position so far as the suit of the respondent is concerned, the petitioner had received the summons of the suit on 27.01.2022. From 27.01.2022, the petitioner had ample opportunity upto 29.05.2022 to have filed its written statement.

19. There is no explanation coming forth, from the petitioner, as to what prevented the petitioner from filing the written statement within a period of 120 days from 27.01.2022 or even upto 29.05.2022. Intriguingly, though the written statement was admittedly filed on 12.07.2022, the application under section 10 CPC was, in fact, actually filed on 14.09.2022. No explanation worth its name has been submitted as to for what reason the application under Section 10 CPC was not filed along with the written statement or even prior thereto.

20. The submission of learned counsel for the petitioner that all these facts, in respect of the ingredients comprising Section 10 CPC, were already disclosed in the written statement as also the application seeking condonation of delay under Order VIII Rule 1 of the CPC read with Section 5 of the Limitation Act, 1963 and were not considered by the learned Trial Court are noted to be rejected. The reason being that the written statement itself having been filed beyond time is a pleading which is non-existent in law, so far as the Commercial Courts Act is concerned, unless taken on record.

21. For the Court to have taken note of any averment in respect of Section 10 or otherwise, a pleading ought to have been filed in time whereafter only this argument could have been addressed and may be



given some credence by the courts.

22. Considering the aforesaid facts which have obtained in the present petition, this Court is of the considered opinion that the impugned order does not call for any kind of interference and the petition along with pending applications is dismissed with no order as to costs.

23. So far as the pendency of Section 10 is concerned, the aforesaid observations are only for the purpose of deciding the impugned order herein, and would not come in the way of the learned counsel raising the issue of Section 10 before the learned Trial Court, which may be decided on its own merits.

MAY 24, 2023/nd

TUSHAR RAO GEDELA, J.

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