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

% Judgment delivered on: 13.03.2023

+ CM(M) 388/2023

M/S SHIVAM CORPORATION INDIA Petitioner
versus

M/S KALYANI INDIA PVT LTD & ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Milind Garg, Mr. Yaksh Garg and Ms.
Astha Chetan, Adv.

For the Respondent : Mr. Ayush Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 11596/2023 (Exemption)

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

CM(M) 388/2023 & CM APPL. 11595/2023 (Stay)

3. The petitioner challenges the orders dated 13.10.2022 and 29.11.2022 in CS (COMM) No. 616/2019 titled '*M/s. Shivam Corporation India Vs. M/s. Kalyani India Pvt. Ltd.*' whereby the learned Trial Court while dismissing the application under Order VIII Rule 10 CPC, 1908 filed by the petitioner/plaintiff simultaneously took on record the written statement which was stated to be filed beyond time.

4. Learned counsel appearing for the petitioner/plaintiff submits that respondents were admittedly served on 05.04.2022 and 14.04.2022. Learned counsel submits that on 19.04.2022, the respondents had entered appearance and sought a copy of the plaint to which the learned counsel appearing for the petitioner/plaintiff assured that would be supplied within an hour. It was only on 06.07.2022, the petitioner/plaintiff supplied a copy of the plaint to the defendants. Learned counsel submits that time was again sought by the respondents/defendant on 13.09.2022 to file the written statement. He submits that it was only on 13.10.2022 that the written statement was filed.
5. Learned counsel further submits that since the written statement was filed way beyond the 120 days period as stipulated in under Order VIII Rule 1 CPC, 1908 as amended by Commercial Courts Act, 2015, it ought not to have been taken on record.
6. Learned counsel appearing for the petitioner also submits that an application under Order VIII Rule 10 CPC, 1908 for passing of the summary judgment was also filed by the petitioner.
7. It was only by way of the impugned order that the learned Trial court has permitted the written statement to be taken on record while dismissing the application under Order VIII Rule 10 CPC, 1908 filed by the petitioner/plaintiff.
8. *Per contra*, learned counsel appearing for the respondents/defendants submits that no doubt that the respondents were served on 05.04.2022 and 14.04.2022, however, no copy of the plaint was served simultaneously.
9. Learned counsel submits that on 19.04.2022 the request was made

and the counsel for the petitioner had assured to supply a copy of plaint on the very same day. Learned counsel submits that the petitioner failed to furnish a copy of the plaint 19.04.2022 and furnished a copy of the plaint on 06.07.2022.

10. Learned counsel submits that the if time period is reckoned from 06.07.2022, the filing of the written statement is well within the period of 120 days outer limit as stipulated under order VIII Rule 1 CPC.

11. In rebuttal, learned counsel draws attention of this Court to page 59 which is the service report of the process server, who effected service upon Mr. Naresh Kumar, the director of the respondent, on 05.04.2022, to submit that there is a specific endorsement of having supplied a copy of the plaint along with the summons to the said Mr. Naresh Kumar. Thus, he submits the submission that plaint was supplied on 06.07.2022 for the first time is without any basis.

12. This Court has heard the rival submissions of the parties as well as considered the record and the impugned order.

13. It is an admitted case of the parties that the two directors of the respondents were served on 05.04.2022 and 14.04.2022 respectively.

14. The petitioner, despite assuring to supply a copy of the plaint on 19.04.2022, supplied it only on 06.07.2022. The time period so far as the respondent is concerned, in the submission of learned counsel for the respondents, commenced on 06.07.2022 and keeping in view that the said fact, the written statement ought to have been treated as filed on time.

15. This Court is unable to agree with the contention of the learned counsel appearing for the respondents for the following reasons:-

(i) This is a commercial suit and the rigors of filing the pleadings on time is well settled law under the judgments of Hon'ble Supreme Court in *SCG Contractors (India) (P) Ltd. Vs. K. S. Chamankar Infrastructure (P) Ltd.* (2019) 12 SCC 210, *Prakash Corporates Vs. Dee Vee Projects Ltd.* (2022) 5 SCC 112 and also of this Court in *Machine Tools Aids India Vs. M/s GNC Infra LLP & Anr.* Neutral Citation No. 2023/DHC/000160. The submission that the copy was supplied belatedly on 06.07.2022 to the respondents and therefore the filing of the written statement is within time is without any merit for the reason that perusal of the process server's report placed at page 59 of the present petition makes it clear that not only the summons but also the copy of the suit was supplied to the directors of the respondents' company and there is nothing to show that the said report is disputed or questioned.

(ii) Having regard to the fact that the summons were served along with copy of the plaint to which the respondents never made any objection in writing to either the Court or the counsel for the petitioner/plaintiff, the mere supply of the plaint along with the documents on 06.07.2022 would not provide the respondents/defendants reasons for the time to be reckoned from 06.07.2022.

(iii) It is an admitted case of the parties that the written statement was in fact filed on 13.10.2022 and reckoning the date of service of the summons along with the plaint, even if it is taken from 14.04.2022, the filing of the written statement on 13.10.2022 is

way beyond the outer limit of 120 days as stipulated under Order VIII Rule 1 CPC.

(iv) Another way of viewing the present dispute would be, in case this Court considers the ratio of *Prakash Corporates* (Supra) and gives the benefit uptill 31.05.2022, and if the time period is reckoned w.e.f. 01.06.2022, then too, the 120 days period would expire on 28.09.2022. In either case, the written statement as filed by the respondents on 13.10.2022 is clearly beyond the period of 120 days as stipulated under Order VIII Rule 1 CPC, 1908.

16. That apart, it would be apposite to extract the provisions of Under Order VIII Rule 1 CPC, 1908 hereunder:-

"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 service of summons.

SPECIAL AMENDMENT

Commercial dispute of a Specified Value:- In its application to any suit in respect of a commercial dispute of a Specified Value, in Order VIII, in Rule 1, substitute the following proviso, namely:-

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 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".

17. It is very clear from the plain reading of the provisions of the aforesaid order that reasons for extending time beyond 30 days after the 120th days was to be recorded by the civil court. It is imperative to note that the language is couched in a negative manner, in that, unless there was cogent reasons for permitting the written statement to be taken on record, ordinarily, written statement beyond the 30 days would be not taken on record.

18. That apart, in view of the fact that no application, in written, seeking condonation of delay, was at all filed by the respondents/defendants, the learned Trial Court could not have taken taking the written statement on record without cogent reasons to be recorded in the impugned order.

19. Learned Trial Court has mis-directed itself in reckoning the date of supply of copy of summons of the plaint as on 06.07.2022, overlooking the documents on record, i.e., the report of the process server who had clearly noted that a copy of the plaint was also supplied to the directors of the respondents/defendants on 05.04.2022.

20. It is clear that the Trial Court has overlooked the documents of an officer of the Court while passing the impugned order and has committed an error of procedure.

21. In view of the above, this Court is of the considered view that the

impugned order is unsustainable in law and ought to be quashed and set aside.

22. As a consequence, the written statement which was directed to be taken on record shall be taken off the record and the learned Trial Court shall proceed with the suit in accordance with law.

23. The petition is disposed of with no order as to costs.

MARCH 13, 2023

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TUSHAR RAO GEDELA, J .

