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

% Judgment delivered on: 15.03.2023

+ CM(M) 409/2023

RITESH CHAUHAN

..... Petitioner

versus

ARCING SOLUTIONS INDIA PVT LTD

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Harshvardhan Sharma and Mr. Shubham Pandey, Advocates.

For the Respondent : Mr. Rajiv K. Garg and Mr. Shiven Banga, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CAV 130/2023

1. Since the counsel for the respondent enters appearance, the caveat stands discharged.

CM APPL. 12208/2023 (for exemption)

2. Exemption is allowed, subject to all just exceptions.

3. The application stands disposed of.

CM(M) 409/2023 & CM APPL. 12207/2023 (for stay)

4. Petitioner challenges the order dated 16.01.2023 in CS (COMM) No. 304/2021 titled as “Arcing Solutions India Private Limited vs. Ritesh Chauhan”, whereby the application under Section 5 of the

Limitation Act seeking condonation of delay in filing the written statement filed on behalf of the petitioner/ defendant was dismissed and written statement was taken off record. Simultaneously, the learned Trial Court also struck off the defense of the petitioner/ defendant.

5. Learned counsel appearing for the petitioner submits that *vide* order dated 28.08.2021, the learned Trial Court had passed orders issuing process. Learned counsel invites attention of the Court to the endorsement of the postal authorities dated 17.09.2021 on the envelope placed at page 204 of the present petition, to the effect that the addressee is not available at the said address and that the addressee had left the said address, to submit that copies of the plaint and documents were not received by the petitioner.

6. Learned counsel further invites attention of this Court to the email dated 18.07.2021 received by the petitioner, whereby the petitioner was made aware of the present suit pending before the learned Trial Court.

7. Learned counsel submits that the petitioner appeared in person on 18.12.2021 before the learned Trial Court *vide* the VC proceedings, as also on subsequent hearings. While the matter was pending, it was on 17.05.2022 that the petitioner sought copy of the plaint along with the documents.

8. Learned counsel submits that the learned Trial Court furnished the copy of the plaint along with the documents from its own record, subject to a costs of Rs. 10,000/-, and directed that the written statement thereto, be filed within thirty days from the said date.

9. Learned counsel submits that the written statement was finally filed on Trial Court Record on 18.07.2022 after copies were received by

the counsel for the petitioner.

10. Learned counsel submits that reckoned from 17.05.2022, the day when the set of plaint along with the documents was furnished to the petitioner/ defendant, the filing of the written statement on 18.07.2022 would fall within the prescribed outer limit period of 120 days under the provisions of Order VIII Rule 1 of the CPC, 1908, as amended by the Commercial Courts Act, 2015.

11. *Per contra*, Mr. Garg, learned counsel for the respondent vehemently opposes the petition and invites attention of this Court to the order dated 29.03.2022, whereby the learned Trial Court had closed the opportunity to file the written statement on the basis that *vide* the order dated 18.11.2021, it was specifically noted that if no settlement is arrived at on 29.01.2022, the written statement must be filed within ten days thereafter.

12. On the basis that no such written statement was filed in compliance of the said order, the learned Trial Court had closed the opportunity to file the written statement.

13. Learned counsel submits that it is an admitted case of the petitioner that the petitioner had indeed appeared on 18.11.2021 before the learned Trial Court.

14. Learned counsel next invited the attention of this Court to the order dated 17.05.2022 to submit that despite the earlier orders, the learned Trial Court had granted indulgence to the petitioner/ defendant by supplying copy of the plaint along with the documents, subject to a payment of cost of Rs. 10,000/- to be paid to the respondent/ plaintiff.

15. Learned counsel submits that even this direction was violated by

the petitioner, both in terms of the non-filing of the written statement within 30 days thereof, nor the payment of cost of Rs. 10,000/- was made to the respondent/ plaintiff.

16. Mr. Garg, learned counsel vehemently opposed the submission that the address of the plaintiff is incorrect and the endorsements by the postal authorities has to be accepted as such. He submits that the demand notice under Section 138 of the N I Act was also delivered and accepted by the petitioner/ defendant at the very same address and, therefore, the bogey of the addressee not being available at the said address, is incorrect and false.

17. Learned counsel also submits that it is only when the learned Trial Court had taken off the record, the written statement, *vide* order dated 18.07.2022 that after passing of two months, the application under Section 5 of the Limitation Act, 1963, seeking condonation of delay in filing the written statement, was filed.

18. Learned counsel submits that even the application under Section 5 of the Limitation Act, 1963 is bereft of any reasons whatsoever.

19. On that basis, learned counsel submits that the impugned order is sustainable in law and no judicial impropriety or material irregularity has been committed by the learned Trial Court.

20. This Court has heard the rival submissions of the parties as has perused the order sheets and other documents placed on record.

21. There is no doubt that the petitioner/defendant had indeed appeared on 18.11.2021 as admitted. However, insofar as the endorsement of the postal authorities dated 17.09.2021 on the envelope is concerned, as of now this Court is taking the endorsement on its face

value.

22. There is no doubt that the petitioner/ defendant had made a request for supply of plaint with document on 17.05.2022, which was indeed allowed by the learned Trial Court, subject to payment of Rs. 10,000/- as costs and with a direction that the written statement be filed within thirty days.

23. It is also not doubted that the direction for filing within thirty days period from 17.05.2022 itself was not adhered to by the petitioner/ defendant. However, the learned Trial Court in its impugned order appears to have overlooked the fact that the period up till 31.05.2022 was covered by the judgment of the Supreme Court in *Suo Moto Writ Petition (C) No. 3/2020 "IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION"* as well as *Prakash Corporates vs. Dee Vee Projects Limited* reported in (2022) 5 SCC 112, whereby the Supreme Court had exempted the parties from the rigors of the Limitation Act, in filing pleadings.

24. There is nothing on record to show that the plaint along with the documents was indeed supplied to the petitioner/ defendant anytime before 17.05.2022.

25. Though, the submission of Mr. Garg is correct to the extent that the application seeking condonation of delay under Section 5 of the Limitation Act was filed subsequently, however, this Court cannot overlook the fact that the procedures are handmade of justice and on certain technicalities, vested right which would accrue to a party ordinarily ought not to be injuncted.

26. In case the supply of plaint along with the documents is

considered to have been effected on 17.05.2022, the filing of the written statement on 18.07.2022 though beyond the original 30 day period but would still fall within the extended period of 90 days beyond the 30 days period.

27. Having regard to the fact that the petitioner has otherwise not been vigilant in taking steps on time, this Court is of the considered opinion that the present petition can be allowed and the written statement can be directed to be taken on record, subject to payment of cost of Rs. 25,000/- in addition to the balance Rs. 5,000/- which is admittedly still left to be paid out of Rs. 10,000/- costs, as imposed *vide* order dated 18.07.2022..

28. The petitioner shall also pay all costs which are pending before the learned Trial Court till today, which remain unpaid.

29. The payment shall be made on or before 29.03.2023 with a proper receipt, which may be filed before the learned Trial Court under a proper index.

30. In view of the aforesaid, the learned Trial Court shall take the written statement on record and proceed in accordance with law.

31. In view of the aforesaid, the present petition along with the pending application stands disposed of.

32. It is made clear that in case the costs are not paid, as per the aforesaid timelines, the indulgence shown today shall automatically be deemed to have been vacated.

TUSHAR RAO GEDELA, J.

MARCH 15, 2023/nd