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

Date of decision: 24.11.2023

+ **CM(M) 425/2023 & CM APPL. 12927/2023**

N P M DISTRIBUTORS & ORS.

..... Petitioners

Through: Mr. Manmohan, Advocate (Through
VC)

versus

CLIDE INTERNATIONAL PVT LTD & ANR. Respondents

Through: Mr. Ashwini Kumar, Mr. Vijay Singh
and Ms. Garima Verma, Advocates
for R-1

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 19.12.2022 passed by the District Judge (Commercial Court), North, Rohini, Delhi in CS (Comm) 282/22 ('Trial Court') whereby the Trial Court struck off the defence of the Petitioners herein.

1.1. The Petitioners are original defendant Nos. 1 to 3 and Respondent No. 1 is the plaintiff and Respondent No. 2 is defendant No. 4 before the Trial Court.

1.2. The commercial suit has been filed by Respondent No. 1 seeking



recovery of Rs. 65,01,674/- along with interest against the Petitioners and Respondent No. 2 and is governed by provisions of Commercial Courts Act, 2015 ('Act of 2015').

2. The Trial Court in its order dated 19.12.2022 recorded that the Petitioners herein have failed to file their written statement within the statutory period of 120 days and further, no application was preferred before the Trial Court for seeking enlargement of time to file the written statement. In view of the said facts, the Trial Court as per Order VIII Rule 1 of Civil Procedure Code, 1908 ('CPC') as amended by the Act of 2015 struck off the defence of the Petitioners herein.

3. Learned counsel for the Petitioners states that though the summons were served on 27.07.2022 through post, however, the paper book received with the summons was incomplete. He states that an e-mail was, thereafter, issued by counsel for the Petitioners on 10.11.2022 to the counsel for Respondent No. 1 for supply of the complete paper book. He has, however, fairly conceded that the Petitioners do not have in their possession the copy of the said e-mail.

3.1. He states that the complete paper book was received by the Petitioners after passing of the impugned order dated 19.12.2022, from Respondent No. 1, upon a request being sent through e-mail dated 19.12.2022.

3.2. He states that since the complete paper book was not served upon the Petitioner on 27.07.2022, therefore, the period of limitation does not commence from the said date of summons received and he, therefore, prays that the impugned order be set aside.

3.3. Learned Counsel for the Respondent No. 1 on instructions states that the Respondent No. 1 are not in receipt of the e-mail dated 10.11.2022,



which has been pleaded by the Petitioners herein. He states that he has as well verified the e-mails addresses of the Respondent No. 1 before making the said statement. He refers to the following email addresses:

- (i) legal.jindal@gmail.com,
- (ii) jindald30@gmail.com; and
- (iii) vijayahlawat86@gmail.com.

3.4. He states that in view of the proviso to Order VIII Rule 1 of the CPC as amended by the Act of 2015 the statutory period of 120 days is to be reckoned from 27.07.2022 i.e., the date of service of summon. He, therefore, states that there is no infirmity in the impugned order dated 19.12.2022 passed by the Trial Court.

4. This Court has considered the submission of the Counsel for the parties and perused the record.

5. It is admitted by the Petitioners that the summons was duly served upon the Petitioners on 27.07.2022 and with the receipt of the summons, the Petitioners were put to unequivocal notice that they are obliged in law to file the written statement within 30 days from the receipt of summons.

6. The Petitioners have admitted that they received a paper book along with the summons, however, it is now sought to be alleged that the said paper book was incomplete. This submission of the Petitioners is not borne out from the record.

6.1. Though the Petitioners was duly represented before the Trial Court on 19.12.2022 through a counsel; however, no such plea of service of incomplete paper book was raised before the Trial Court.

6.2. The plea of the Petitioners that their counsel issued an e-mail on 10.11.2022 is also not substantiated from the record; no such email has been



placed on record. The Respondent has categorically denied receipt of any such alleged e-mail.

6.3. The period of 120 days expired 24.11.2022. The Petitioners failed to file the written statement within the statutory period prescribed under Order VIII Rule 1 CPC as amended by Act of 2015.

7. There is no evidence on record to suggest that the Petitioners herein did not receive the complete paper book with service of summons on 27.07.2022. This plea is unsubstantiated from the record.

7.1. This Court is of the opinion that if the Petitioners had sincerely not received the entire paper book with the summon on 27.07.2022; they were legally obliged to approach the Trial Court at the earliest for seeking the copy of the paper book so that written statement is filed within limitation. However, the Petitioners admittedly at no stage approached the Trial Court for supply of the paper book. The 120 days expired on 24.11.2022. No such grievance was made before the Trial Court on 19.12.2022 when the impugned order was passed.

8. In view of the aforesaid circumstances, as per the mandatory provision of the Act of 2015 and as settled by the Supreme Court in **SCG Contracts (India) Private Limited v. K.S. Chamankar Infrastructure Private Ltd. And Ors, (2019) 12 SC 210**, the Trial Court therefore, correctly held that the right of the Petitioners to file the written statement stands forfeited.

9. This Court, therefore, does not find any infirmity in the order of the Trial Court dated 19.12.2022. Accordingly, no error exists warranting supervisory correction, in exercise of Article 227 jurisdiction of this Court. s

10. For the aforesaid reasons, this petition is completely devoid of merit



and is accordingly dismissed. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J
NOVEMBER 24, 2023/rhc/aks/ms

Click here to check corrigendum, if any