

\$~5

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

% Judgment delivered on: 22nd May, 2023

FAO (COMM) 88/2023

+ FAO (COMM) 88/2023 & CM APPL. 26999/2023

S R ELECTRO Appellant

versus

DELTA ELECTRONICS Respondent

Advocates who appeared in this case:

For the Appellant: Ms. Anuradha Dixit, Advocate (through V.C.)

For the Respondent: Mr. Nidish Gupta, Advocate. (through V.C.)

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

FAO (COMM) 88/2023 & CM APPL. 26999/2023 (stay)

1. Appellant impugns order dated 09.02.2023, whereby, the Trial Court has permitted the written statement to be taken on record and permitted the respondent to contest the suit on merits.

2. Subject suit was filed by the appellant for recovery. Though the ordersheet of the Trial Court records that the respondent was not served in the suit, a counsel entered appearance for the respondent on 05.07.2022. Respondent failed to file written statement within 30 days. Subsequently, the respondent failed to appear and was proceeded ex-parte on 27.09.2022.

3. An application under Order IX Rule 7 CPC was filed by the respondent seeking setting aside of the ex-parte order, which was allowed on 09.12.2022, subject to costs of Rs.15,000/-. One week time was granted to the respondent to file the written statement.
4. Order dated 09.12.2022 records that respondent had raised the grievance that respondent had not received a copy of the plaint. Copy of the plaint was received through Whatsapp on 22.08.2022. Thereafter on 31.08.2022, lawyers were abstaining from work and as such counsel for the respondent could not appear and the suit was adjourned to 27.09.2022. On 27.09.2022 when the counsel for the respondent reached the Court, he was informed that the respondent had already been proceeded ex-parte. Pursuant to which, the application under Order IX Rule 7 CPC was filed which got allowed on 09.12.2022.
5. On 09.12.2022, while setting aside the ex-parte order, the Trial Court granted one week time to the respondent to file written statement.
6. When the suit was again taken up on 31.01.2023, none appeared for the respondent and as the written statement was also not on record, the right to file the written statement was closed and the case was adjourned to 09.02.2023.
7. On 09.02.2023, the Court noticed that written statement along with Statement of truth and the affidavit of admission and denial of documents was sought to be filed on that date along with an application seeking recall of order dated 31.01.2023.
8. The application was allowed and the written statement was taken on record subject to payment of cost of Rs.20,000/-. The cost of Rs.20,000/-

has also been forwarded to the appellant. Though counsel for the appellant submits that the same was received through an online mode, however, it is not in dispute that the same was not offered to be returned till 15.03.2023.

9. Perusal of the application filed by the respondent on 09.02.2023 shows that the written statement was filed through the online portal of the District Court. The application also indicates the filing number for the online filing of 21.12.2022. Copy of the written statement was also sent to learned counsel for the respondent which was also received on 21.12.2022 along with the cost.

10. Record shows that the respondent had filed the written statement on 21.12.2022 through the online mode and as such, the order of the Trial Court dated 31.01.2023 closing the right of the respondent is not sustainable.

11. Online mode is a permitted mode of filing documents and the written statement was filed through the online mode within 12 days of the permission granted by the Court. It may be noticed that though leave of 7 days was granted, however, online filing was done within 12 days with a mere delay of 5 days. The Trial Court record reveals that the respondent was not served yet the counsel entered appearance on 05.07.2022. Thereafter copy of the plaint was received on 22.08.2022 and the respondent was proceeded ex-parte on 27.09.2022, i.e, within one month and 5 days of receipt of copy. Thereafter the written statement was filed within 12 days of the permission being granted on 09.12.2022. So in effect the respondent took one month and 17 days to file the written statement.

12. We may also notice that all these facts have already been taken into account and discretion has been exercised by the concerned Court in taking

on record the written statement of the respondent by the impugned order dated 09.02.2023.

13. Consequently, we find no ground to interfere in the discretion exercised by the Trial Court in taking on record the written statement filed by the respondent.

14. In view of the above, we find no merit in the present appeal. The appeal is consequently dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

MAY, 22, 2023
st



न्यायमेव जयते