

\$~59

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

% Judgment delivered on: 20.04.2023

+ CM(M) 619/2023 & CM APPL. 18985/2023, CM APPL. 18987/2023

M/S DOON VALLEY FOODS PVT LTD Petitioner
versus

M/S BASHESHWAR LAL AMIT KUMAR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Saurabh Kansal and Ms. Ashu
Chaudhary, Advs.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the impugned order dated 22.02.2023 passed by the learned Trial Court in CS (COMM.)1173/2021 titled '*Basheshwar Lal Amit Kumar Vs. Doon Valley Foods Pvt. Ltd.*' whereby the application of the petitioner under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the written statement was dismissed, on the ground that it was filed after the expiry of 120 days.

2. It is to be noted that the present petition arises out of a commercial suit filed under the Commercial Courts Act, 2015.

3. Ms. Chaudhary, learned counsel appearing for the petitioner, very fairly submits that the summons of the suit were served upon the petitioner/defendant on 06.06.2022. Learned counsel also submits that

the written statement was filed on 07.11.2022.

4. Learned counsel submits that the reason for the delay was that a fire had broken out in one of the plants of the petitioner established in Vaad Nagar, Gujarat and on that account, the petitioner was not able to contact the counsel to defend his case in Delhi. Ms. Chaudhary submits that as soon as the petitioner came to terms with the disaster, the petitioner had contacted his lawyer in Delhi and filed the written statement on 17.11.2022. Learned counsel submits that it is only on account of the aforesaid tragedy in the plant of the petitioner that the petitioner was unable to concentrate and undertake proper steps to file written statement before the learned Trial court and as such, the delay be condoned and the written statement be taken on record.

5. Learned counsel relies on the judgment of Hon'ble Supreme Court in ***Raj Process Equipments and Systems Pvt. Ltd. and Others Vs. Homesh Derivatives Pvt. Ltd. SLP (C) No. 19754/2022*** decided on 03.11.2022 to submit that the suit in the present case was also originally filed as an ordinary civil suit and subsequently it was converted into a commercial suit and therefore applying the ratio of the aforesaid judgment, the written statement be taken on record.

6. I have heard the learned counsel as also perused the impugned order as well as the judgment of the Hon'ble Supreme Court in ***Raj Process Equipments and Systems Pvt. Ltd.*** (Supra).

7. At the outset, this Court has first considered the legal proposition laid down by the Hon'ble Supreme Court in ***Raj Process Equipments and Systems Pvt. Ltd.*** (Supra) and considered the facts obtaining in the present case. Though, the suit was filed under the ordinary original side

before the learned Trial Court, however, by the order dated 24.05.2022, the learned Trial Court had treated the same as a commercial suit and it was only thereafter, that summons under the prescribed procedure was issued to the petitioner as stipulated under the amended Code of Civil Procedure, 1908 in terms of the Commercial Courts Act, 2015. The suit as laid, was served upon the petitioner in the procedure prescribed for the commercial suit and in view of that background, the judgment of the Hon'ble Supreme Court in the aforesaid ***Raj Process Equipments and Systems Pvt. Ltd.*** (Supra) shall not be applicable to the facts of the present case.

8. In so far as filing of the written statement is concerned, it is clearly admitted by the petitioner that the petitioner was served with the summons of the suit on 06.06.2022 and even if the benefit of the extended period of 90 days is reckoned from the date when the 30 days initial period had expired, the prescribed period of 120 days would expire well before 07.11.2022.

9. Having regard to the ratio laid down by the Supreme Court in ***SCG Contractors (India) Pvt. Ltd. Vs. K. S. Chamankar Infrastructure Private Ltd. & Others (2019) 12 SCC 210***, it is no more *res integra*, that so far as commercial suits are concerned, the period of 120 days is mandatory and a written stated filed beyond such period, is not condonable.

10. In view of the above, the present petition is without any merits and the same is dismissed, without any costs.

TUSHAR RAO GEDELA, J .

APRIL 20, 2023/ms