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

% Judgment delivered on: 18.05.2023

+ CM(M) 836/2023 & CM APPL. 26211/2023 (Stay)

M/S WAVE

..... Petitioner

versus

M/S DDEX

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Kartikeya Rastogi and Ms. Inderdeep
Kaur Raina, Advocates

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 order dated 16.02.2023 in CS DJ No. 1540/2018 titled *M/s. DDEX, A proprietorship Firm Through Deepak Dhawan Vs. M/s. Wave Through Its Proprietor Kumar Chugani* whereby the application seeking reopening of the right to file a written statement in a suit filed under the Commercial Courts Act, 2015 was dismissed.

2. Learned counsel appearing for the petitioner submits that though the petitioner was served in the month of July, 2021, however, no copy of the suit or documents appended thereto were served upon the defendant.

3. Learned counsel submits that on 16.08.2021, learned counsel on behalf of the petitioner had appeared, however, due to the disturbance on the video conferencing facilities, could not appropriately address the Court. Learned counsel submits that thereafter on 30.09.2021 till 05.08.2022 learned erstwhile Presiding Officer had superannuated and no new Judicial Officer was appointed to the particular court till 05.08.2022.

4. Learned counsel submits that even on 05.08.2022, learned Presiding Officer was on leave. Learned counsel further submits that it was only on 07.09.2022 when the matter was taken up and in the absence of learned counsel for the petitioner, the learned Trial Court has passed the impugned order closing the right to file the written statement.

5. Learned counsel submits that the absence of learned counsel for the petitioner on 07.09.2022 was purely for the reason that there was a bereavement in the family of the counsel.

6. Learned counsel further submits that the learned Trial Court did not consider any of the aforesaid submissions while passing the impugned order.

7. Learned counsel vehemently submits that till date, the copy of the suit along with its annexures have not been supplied and therefore, the petitioner was unable to file its written statement. Learned counsel also relies upon the judgment of **Rajesh Kathpal Vs. M/s. Shubh Steel** passed by this Court on 12.10.2022 in CM (M) 991/2022 Neutral Citation No. 2022: DHC:4247 to submit that this Court had held that

service of the summons in a suit, in order to constitute a starting point for the time available for filing of written statement, has to be read as meaningful service and unless the service of the summons to a particular suit, the plaint alongwith the documents is furnished, such service is incomplete for such purposes.

8. Basing thereon, learned counsel submits that the starting point of written statement has not even commenced in this case.

9. This Court has considered the submissions of learned counsel appearing for the petitioner and perused the impugned order as also the judgment relied upon by the petitioner.

10. Though the petitioner has candidly submitted that the service was effected in July, 2021, however, this Court is aware that at least uptill 28.02.2022, the petitioner was under the umbrella of the judgment of the Supreme Court in '*Suo Moto Writ Petition (C) No.3/2020 'In Re: Cognizance for Extension of Limitation'*' which had granted amnesty from the application of limitation to the period. Thereafter, with effect from 01.03.2022, 90 days were further provided by the Supreme Court, for completion of pleadings. It is not disputed that the petitioner did not avail of the aforesaid opportunity even uptill the expiry of 90 days period as granted by the Supreme Court with effect from 01.03.2022.

11. That apart, learned counsel appearing for the petitioner has not been able to show even a single letter or notice or even an application under Section 151 CPC or any provision of CPC, 1908 issued to the respondent/plaintiff or its counsel or even to the learned Trial Court to

demonstrate that the petitioner/defendant had in fact taken all effective steps to file the written statement. Not only that the petitioner had failed to demonstrate any such steps being taken even uptill 30.05.2022, it had failed to show that what steps it took with effect from 01.07.2022 to 07.09.2022 when the impugned order was passed.

12. Keeping in view the fact that proceedings before the learned Trial Court emanates out of Commercial Courts Act, 2015 and according to the Supreme Court in *SCG Contractor (India) Private Limited Vs. K. S. Chamankar Infrastructure Private Limited And Others (2019) 12 SCC 210* as also by this Court in catena of judgments, the time lines specified in the Commercial Courts Act, 2015 by virtue of amendment to Order VIII Rule 1 CPC, 1908 ought to be applied strictly.

13. Insofar as the judgment relied upon by the counsel in the case of *Rajesh Kathpal* (Supra) passed by the Coordinate Bench of this Court, is concerned, although there is no quarrel with the proposition laid down therein, however, the same are not applicable to the facts of the present case. There was no material on record to demonstrate that the petitioner/defendant had taken appropriate steps to safeguard its interest.

14. In view of the aforesaid, this Court is of the considered opinion that there is no reason to interfere with the impugned order. The petition is, therefore, dismissed with no order to as to costs.

15. Pending application also stands disposed of.

TUSHAR RAO GEDELA, J .

MAY 18, 2023/ms