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

Date of decision: 28.11.2023

+ CM(M) 812/2019

WORLD CLASS AUTOMOBILES P LTD Petitioner

Through: Mr. Vipin Singhanian, Adv.

versus

MCM SERVICE PVT LTD Respondent

Through: None.

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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):

CM APPL. 61057/2023

1. This application has been filed by the Petitioner seeking early hearing of this Petition.
2. The Application is allowed and with the consent of the Petitioner, the main matter is being taken up on Board today itself for disposal.

CM(M) 812/2019

3. This Petition filed under Article 227 of the Constitution of India impugns the order dated 25.03.2019 passed by the Additional District Judge (West District), Tis Hazari Courts, Delhi in Civil DJ No. 610485 of 2016, titled as **M/s World Class Automobiles Pvt Ltd. vs. M/s MCM Services Pvt Ltd.** ('Trial Court') whereby the Trial Court condoned the delay of 605



days in filing the written statement by the Defendant, subject to the cost of Rs. 20,000/-.

3.1. The Petitioner herein is the original plaintiff and Respondent is original defendant before the Trial Court.

3.2. The Civil Suit has been filed by the Petitioner for recovery of a sum of Rs. 7,68,465.00/- against the Respondent.

4. Learned Counsel for the Petitioner states that though the Respondent was admittedly served on 26.12.2015; the Respondent belatedly filed his written statement on 17.08.2017 with a delay of 605 days.

4.1. He states that reasons recorded by the Trial Court while exercising its discretion to condone the said delay is based on incorrect facts.

4.2. He states that the Trial Court wrongly noted that delay in filing the written statement was due to the pendency of the consumer complaint filed by the Respondent before the State Consumer Dispute Redressal Commission, New Delhi ('SCDRC') bearing CC no. 351/2015, which was subsequently withdrawn by the Respondent on 09.02.2017.

4.3. He states that the said consumer complaint is pending even as on date and, therefore, the reasons recorded in the impugned order are incorrect.

5. This Court has considered the submission of the Petitioner and perused the record.

6. It is admitted on record that prior to the filing of this Suit, the Respondent had filed a consumer complaint before the SCDRC and the same was pending on the date when the Suit was filed on 30.10.2015

7. In these circumstances, the Respondent initially filed an application under Section 10 of the Code of Civil Procedure, 1908 ('CPC') seeking a stay of the aforesaid civil suit filed by the Petitioner to await the decision in



the consumer complaint pending before SCDRC.

8. The Petitioner herein, however, relied upon the judgment passed by the Division Bench of this Court in **Hindustan Motors Limited Vs. Amardeep Singh Wirk & Others; 2009 (111) DRJ 129 (DB)** before the Trial Court to demonstrate the lack of maintainability of the said application as filed under Section 10 of CPC by the Respondent. The Petitioner contended that both the proceedings were maintainable simultaneously.

9. As per the record that the Respondent herein on 09.02.2017 after some arguments withdrew his application filed under Section 10 of the CPC and, thereafter, proceeded to file his written statement on 17.08.2017.

10. It is thus evident that the reference to the date of 09.02.2017, as the finding mentioned in the impugned order, is with respect to the withdrawal of the application under Section 10 of the CPC and not the withdrawal of the consumer complaint *per se*.

11. This Court is of the opinion that the exercise of discretion by the Trial Court under Section 5 of the Limitation Act, 1963 is not a discretion which requires interference by this Court in its exercise of Article 227 of the Constitution of India which is a supervisory jurisdiction and is to be used very sparingly.

12. Admittedly, the Trial Court is vested with the requisite power under Order VIII Rule 1 to condone the delay in filing the written statement. An error of law or error of fact by the Trial Court in exercise of its power would fall within the jurisdiction of the Trial Court. The contentions raised by the Petitioner herein as regards the errors in the decision would not warrant interference by this Court **Re: Mohd. Yunus v. Mohd. Mustaqim and Ors. (1983) 4 SCC 566.**



13. In the facts of this case, though order of the Trial Court taking the written statement on record is dated 25.03.2019, however, the written statement itself was filed on record on 17.08.2017. Moreover, the Petitioner herein has neither elected to file his replication nor permitted the said suit to proceed. The aforesaid conduct of the Petitioner, in fact, evidences its own lack of interest in pursuing its plaint.

14. At this stage, learned counsel for the Petitioner states that the Petitioner is willing to accept the order of the Trial Court and seeks four (4) weeks' time to (i) file his replication; and (ii) affidavit of admission/ denial of documents filed by the defendant along with his written statement.

15. Accordingly, in the interest of justice, the Petitioner is granted four (4) weeks' time to file his replication and affidavit of admission/ denial of documents on or before 22.12.2023.

16. The Respondent is directed to remit the cost of Rs. 20,000/- imposed by the impugned order to the Petitioner or before 22.12.2023 before the Trial Court.

17. The Petitioner is directed to place the copy of this Court's order along with an appropriate application before the Trial Court within two (2) weeks with an advance copy to the opposite party.

18. With the aforesaid directions, the present petition stands disposed of.

19. The date already fixed i.e., 12.01.2024 stands cancelled.

20. Pending application, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 28, 2023

Aks/MS