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

+ CM(M) 1108/2023 & CM APPL. 35940/2023 CM APPL. 35941/2023

SH. SHIV BATHLA

..... Petitioner

Through: Mr. Shiv Kumar Gandhi, Advocate
(Through VC)

versus

PUNJAB NATIONAL BANK

..... Respondents

Through: Mr. Anmol Panwar, Advocate
(Through VC)

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Date of Decision: 18th July, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the orders dated 31.10.2022 and 20.05.2022 passed by the District Judge (Comm.) Digital-07, South East District, Saket Courts, Delhi ('Trial Court') in CS (Comm.) No. 388/2022, titled as '*Punjab National Bank v. Shiv Bathla*', whereby the Trial Court *vide* order dated 31.10.2022 closed the right of the Petitioner i.e., defendant to file the Written Statement and subsequently, *vide* order dated 20.05.2022, dismissed the Petitioner's application under Order VIII Rule 1 of CPC seeking condonation of delay in filing the written statement.

2. Brief facts leading to the filing of present petition are as under:



2.1. The Respondent i.e., plaintiff had filed the aforesaid commercial suit for recovery of Rs. 13,77,099.24/- along with future and *pendente lite* interest @ 8.55% per annum on the said sum till realization and other ancillary reliefs.

2.2. The summons was issued by the Trial Court to the Petitioner, which was admittedly received by the Petitioner on 06.08.2022 through Speed Post.

2.3. The Petitioner after receiving the summons, entered appearance through and advocate, who filed his *vakalatnama* on 26.09.2022. On this date the Presiding Officer was on leave and the matter was adjourned to 31.10.2022. Thereafter, on 31.10.2022 the counsel for the Petitioner entered appearance through Video Conferencing mode at 2:00 p.m. and submitted before the Trial Court that he was not able to file the written statement since, the complete copy of the documents has not been provided, inasmuch as page no. 57 of the document is missing and some portions of page numbers 29, 30 and 31 of the said documents were not legible.

2.4. The Trial Court *vide* order dated 31.10.2022, closed the Petitioner's right to file written statement by holding that if the deficiency in the documents were material and prevented the Petitioner to from filing the written statement within thirty (30) days of service, appropriate application for supply of legible copies and extension of time for filing the written statement should have been moved.

2.5. The Petitioner thereafter filed his written statement on 17.11.2022 along with application under Order VIII Rule 1 of CPC seeking condonation



of delay 69 days in filing the written statement. However, the same as well was dismissed by the Trial Court *vide* order dated 20.05.2022.

3. Learned counsel for the Petitioner states that in the application filed under Order VIII Rule 1 of CPC, the Petitioner herein i.e., the defendant had averred that his mother, aged about 61 years, is suffering from low white cell problems, whereas the defendant himself is also suffering from eye problem due to which he could not file his written statement within the time prescribed. He states that Petitioner had also annexed the medical documents along with the said application.

3.1. He states that though the written statement was not filed within 30 days period, as stipulated, however, the same has been filed on 17.11.2022. He states that the 120 days from service of summons would have expired on 04.12.2022. He states that thus, the delay of 69 days over and above the 30 days period could have been condoned by the Trial Court.

4. In reply, learned counsel for the Respondent, who appears on advance service states that the Respondent has no objection, if the written statement of the Petitioner is taken on record subject to payment of legal costs.

5. This Court has considered the submissions of the parties and perused the record.

6. The law with respect to the limitation for filing the written statement in commercial suits has been settled by the Supreme Court in **SCG Contracts (India) Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd., (2019) 12 SCC 210** and has been reiterated by the predecessor bench of this Court in **MN Automobile Private Limited v. Guriqbal Singh and Anr., 2023 SCC OnLine Del 3020**, relevant paragraph whereof reads as under:



*“10. The rigors of the Commercial Courts Act have been already settled by the Supreme Court in SCG Contracts (India) Private Limited v. K.S. Chamankar Infrastructure Private Ltd. reported in (2019) 12 SCC 210. However, this Court has considered the delay which has occurred of about 67 days reckoned from 29.06.2022 and is of the considered opinion that the said delay will not come in the way of the petitioner from entitling it to file its written statement. **In any case, the settled law of the land is that the cases ought to be considered and disposed of on merits rather than technicalities.**”*

(Emphasis Supplied)

7. This Court takes note of the fact that though the written statement was filed beyond thirty (30) days period, as stipulated, however, has been filed within the ninety (90) days extended period, as stipulated in Order VIII Rule 1 of CPC. Further, the Petitioner has also filed an application under Order VIII Rule 1 of CPC seeking condonation of delay.

8. In view of the aforesaid fact of the written statement being filed within 120 days coupled with the no objection given by the Respondent, this Court deems it fit to direct the Trial Court to take the written statement filed by the Petitioner on record, subject to the Petitioner making payment of costs of Rs. 15,000/- to the Respondent and separately costs of Rs. 10,000/- to the counsel for the Respondent respectively within a period of two (2) weeks and proceed with suit in accordance with law. The total legal costs are Rs. 25,000/-.

9. The Petitioner is directed to file his affidavit by way of admission/denial of documents filed with the plaint, within a period of one (1) week, if not already filed.

10. The Respondent is directed its replication within a period of four (4) weeks.



11. It is directed that if the Petitioner fails to comply with the aforesaid direction a time bound manner, his defense shall be struck off from the record.

12. Accordingly, the petition is allowed, the order dated 31.10.2022 and 20.05.2023 are set aside. The Petition is allowed in terms of the aforesaid direction, pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

JULY 18, 2023/aa

