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

Date of decision: 01.08.2023

+ CM(M) 1188/2023 & CM APPLs. 37899/2023, 37900-01/2023

BEENA GOSWAMI

..... Petitioner

Through: Mr. P.D.V. Srikar, Mr. Anuj Kumar
Sharma and Mr. Sohan Petwal,
Advocates

versus

STATE BANK OF INDIA

..... Respondent

Through: Mr. Rajiv Kapur, Mr Akshit Kapur,
Advocates for SBI

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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):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 13.07.2023 passed by the District Judge (Commercial Court), North-East District, Karkardooma Court, Delhi ('Trial Court') in C.S. (Comm.) No. 36/2023 titled as "**State Bank of India v. Beena Goswami Prop of M/s Avni Infratech**" whereby the Trial Court struck off the defence of the Petitioner.

1.1. The Petitioner is the original defendant and the Respondent is the original Plaintiff in the commercial suit. The plaintiff has filed a commercial suit for recovery of money and interest thereon from the defendant.

2. The learned counsel for the Petitioner states that the Petitioner herein entered appearance before the Trial Court upon receiving an e-mail on



19.05.2023 from the e-Court regarding the institution of the commercial suit. He states that no summons or copy of the paper book was served on the Petitioner with this e-mail.

2.1. He states that the Petitioner was diligent and duly engaged a counsel, who entered appearance before the Trial Court on 08.06.2023 and undertook to file a written statement within three (3) weeks. He states that since the Petitioner herein was not served with a copy of the plaint and the documents; therefore, the counsel for the Petitioner contacted the counsel for the Respondent for a copy of the plaint and documents.

2.2. He states that since a copy of the plaint and documents were not provided by the counsel for the Respondent, the Petitioner was unable to file his written statement within the time granted by the Trial Court on 08.06.2023 and in these circumstances, the Trial Court *vide* impugned order dated 13.07.2023 struck off the defence of the Petitioner herein.

2.3. He states that the Petitioner has duly applied for the certified copy of the plaint and the documents on 07.07.2023, however, the certified copies have not been provided by the registry of the Trial Court.

2.4. He states that the only reason the Petitioner herein has been unable to file his written statement is due to the non-furnishing of the plaint and the documents. He states that the Petitioner undertakes to file the written statement within one (1) week from today and is also willing to pay legal costs to compensate the Respondent for the delay in the Trial Court.

3. Issue notice.

4. The learned counsel for the Respondent enters appearance and accepts notice. He states that the Petitioner herein has failed to show any diligence in filing the written statement despite having entered appearance on 08.06.2023.



4.1. He states that a perusal of the orders dated 08.06.2023 and 01.07.2023 would evidence that the Petitioner herein duly entered appearance through his counsel and did not raise any dispute with respect to the non-furnishing of the plaint and documents as is sought to be stated in the present petition.

4.2. He states, however, without prejudice to the rights and contentions of the Respondent, as directed by this Court, he has (earlier today) furnished a copy of the plaint and the documents to the learned counsel for the Petitioner.

5. In response, the learned counsel for the Petitioner confirms that he has received the entire copy of the plaint and the documents from the Respondent; he has perused the same and is satisfied that the same is complete.

5.1. He reiterates that he will file his written statement, affidavit of admission/denial of the documents filed with the plaint, statement of truth and the list of documents of the defendant within a period of one (1) week.

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

7. As per the statement made in this petition, the summons in the suit were issued by the Trial Court on 18.05.2023. The period of 120 days, even if reckoned from 18.05.2023, would expire on 15.09.2023.

8. 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)

9. In the facts and circumstances of this case, where the Petitioner has contended that (i) the copy of the plaint and the documents were not received by the Petitioner, (ii) the counsel for the Petitioner followed up with the counsel for the Respondent for furnishing the same; and (iii) in view of the fact that from the impugned order, it is not evident if summons were served upon the Petitioner herein either through process server or speed post with the copy of the plaint and documents; this Court would like to give the benefit of doubt to the Petitioner and accept his submission that he has not received the paper book.

10. Further, considering the fact that the maximum period of 120 days has not expired from issuance of summons in this case and the Petitioner has approached this Court immediately on 25.07.2023, without any delay, this Court deems it appropriate to extend the time of the Petitioner to file the written statement, statement of truth, affidavit of admission/denial of documents filed with the plaints and documents relied upon by the defendant, within a period of one (1) week from today. The said opportunity is granted, subject to the Petitioner paying legal costs of Rs. 15,000/- to the Respondent within a period of one (1) week.

11. The Petitioner shall file the proof of payment of costs before the Trial Court. It is directed that, if the Petitioner fails to avail the opportunity granted by this Court, his defence shall be struck off at the expiry of one (1) week.

12. The Respondent is directed to file their replication within a period of four (4) weeks from the receipt of the written statement of the Petitioner.



13. With the aforesaid directions, the present petition is allowed and the impugned order dated 13.07.2023 is set aside.

14. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 1, 2023/rhc/asb

[Click here to check corrigendum, if any](#)

