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

Date of decision:01.08.2023

+ **CM(M) 1207/2023**

MANOJ KUMAR

..... Petitioner

Through: Mr. J.K. Sharma and Mr. Ashish Gupta, Advocates

versus

ASIF ALI KHAN

..... 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. 38689/2023 & 38690/2023 (for exemption)

Exemption is allowed, subject to all just exceptions.

Accordingly, the present applications stand disposed of.

CM(M) 1207/2023 & CM APPL. 38688/2023 (for stay)

1. This petition filed Article 227 of the Constitution of India impugns the order dated 10.05.2023 passed by District Judge (Commercial Court- 04), South, Saket Courts, New Delhi ('Trial Court') in CS (COMM) No. 482/2022 titled as *Asif Ali Khan v. Manoj Kumar* whereby the Trial Court has dismissed the Petitioner's application for condonation of delay in filing the written statement and subsequently declined to take the said written statement on record.

1.1. The Petitioner is the original defendant and the Respondent is original plaintiff in the commercial suit.



2. The learned counsel for the Petitioner states that the Petitioner herein was served with the summons only through the mode of WhatsApp on 26.11.2022.

2.1 He states that the Petitioner engaged a counsel, who while preparing the written statement realised that a crucial page of the purported Agreement to Sale dated 25.08.2016 was missing. He states that the claim in the entire plaint is based on the said agreement and the Petitioner herein disputes the veracity of the said agreement. He states that the purported Agreement has been filed by the plaintiff with the plaint and relied upon the same.

2.2 He states that the counsel for the Petitioner made attempts to reach out to the counsel for the Respondent for providing the missing page no. 14 of the paper book. He states that the missing page no. 14 was admittedly provided to the Petitioner's counsel only on 07.03.2023.

2.3 He states that as the missing page no. 14 was provided on 07.03.2023; therefore, the statutory period for filing the written statement is to be reckoned from the said date; as the complete set of the plaint along with documents has been furnished to the Petitioner. He states the statutory period cannot be reckoned from 26.11.2022, when an incomplete paper book was served on the Petitioner.

2.4 He states that thereafter on 10.05.2023, the Petitioner herein filed the written statement along with an application for condoning the delay of 34 days. He states that since the complete paper book was provided on 07.03.2023, the statutory period of 30 days recorded from 07.03.2023 expired on 06.04.2023 and therefore, the further delay of 34 days as on 10.05.2023 should have been condoned by the Trial Court.

2.5 He states that the observation of the Trial Court that the Petitioner



herein refused to accept summons through registered post on 26.11.2022 is incorrect. He states that in the memo of parties filed with the plaint, the Respondent has furnished two (2) addresses for service on the Petitioner herein i.e., (i) *H Block, 13C, First Floor, Saket, New Delhi – 110017* (**‘Saket’**) and (ii) *J-7, Sainik Farm, Lane No.14, New Delhi 110018* (**‘Sainik Farms’**).

2.6 He states that the Petitioner herein has shifted from the premises at Saket almost three (3) years ago and therefore no service of summons could have received by the Petitioner on the said address through registered post.

2.7 He further states with respect to the Sainik Farms address, the said address as set out in the memo of parties is incorrect. He states that the correct address of the Petitioner at Sainik Farms is as under:

J-7/B, Sainik Farms, Lane No. 15, New Delhi- 110068

2.8 He states that due to the incorrect address the registered post could not be received by the Petitioner even at the Sainik Farms address.

2.9 He states that grave prejudice would be caused to the Petitioner herein if the written statement is not taken on record.

2.10 He prays that the legal costs be imposed on the Petitioner and the written statement be taken on record. He states that a statement of truth in support of the written statement along with the affidavit of admission-denial of documents filed with the plaint and the list of documents relied upon in support of the written statement shall also be filed within a period of one (1) week from today.

2.11 He states that the Petitioner undertakes to henceforth diligently appear before the Trial Court, cooperate in the expeditious disposal of the proceedings and not seek any unnecessary adjournment.

3. None appears on behalf of the Respondent, despite an advance service.



4. This Court has considered the submissions of the learned counsel for the Petitioner and perused the record.

5. In the facts of the present case as noted above, it is apparent that the Petitioner herein was served through the mode of WhatsApp. Further the fact that the Petitioner herein was not served with a page no. 14 of the Agreement dated 25.08.2016 also appears to be an admitted fact.

6. In view of the fact that the service of the missing page no. 14 of the said agreement was provided on 07.03.2023 to the Petitioner, therefore, this Court is of the opinion that the service was completed upon the Petitioner on the said date and the time for filing the written statement would commence from 07.03.2023.

7. In this regard, it would be appropriate to refer to the judgment in **Mr. Rajesh Kathpal vs. M/s Shubh Steel** passed by the learned Single Judge of this Court in **CM(M) 991/2022** on 12.10.2022 wherein this Court observed that, the time for filing the written statement would commence from the date when the suit along with the documents is provided to the defendant. The operative portion to this aspect reads as under:

“7. Service of summons in a suit, in order to constitute a starting point for the time available for filing of a written statement, has to be meaningful service. In other words, the time for filing written statement would commence from the date when the suit along with the documents is provided to the defendant. That, as per the record, even as the present petition filed by the petitioner before this Court, took place only on 13th March 2020.”

(Emphasis Supplied)

8. In view of the submissions made by the counsel for the Petitioner with respect to the fact that the Petitioner is not residing at the Saket address for past three (3) years and his address at Sainik Farms as mentioned in the memo of parties is incorrect, no adverse inference can be drawn against him for the refusal of service of summons sent by registered post at the said addresses.



9. As it is evident from the record that the matter was listed before the Trial Court on 01.03.2023 and thereafter on 10.05.2023. In view of the fact that the Petitioner herein had filed his written statement within 64 days after service of complete paper-book, this Court is of the opinion that the delay of 34 days in filing the written statement should be condoned so as to enable the disputes between the parties to be decided on merits.

10. However, this Court finds merit in the observation of the Trial Court that the Petitioner herein was not diligent and failed to raise the issue of missing page no. 14 on 11.01.2023 and therefore, the delay in filing the written statement is condoned subject to payment of legal costs of Rs. 40,000/- by the Petitioner to the Respondent on or before 28.08.2023. The Petitioner shall place the proof of payments before the Trial Court on or before 28.08.2023.

11. Subject to the Petitioner providing the proof of the payment of costs, the written statement, the statement of truth, the affidavit of admission-denial of documents filed with the plaint and documents of the defendants will be taken on record, if filed within one (1) week. It is made clear that if the Petitioner fails to avail this opportunity within the time granted by this Court and pay the costs, the right of the Petitioner to file the written statement shall stand closed, without any further extension.

12. In addition, the statement of the Petitioner as recorded at paragraph 2.11 is taken on record and he is bound down to the same.

13. At this stage, learned counsel for the Petitioner states that he has not objection and will duly pay the costs of Rs. 40,000/- to the Respondent and comply with the directions issued hereinabove.

14. With the aforesaid directions, the present petition is allowed and the



impugned order dated 10.05.2023 is set aside in the aforesaid terms.

MANMEET PRITAM SINGH ARORA, J

AUGUST 1, 2023/rk/ms

Click here to check corrigendum, if any

