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

% Judgment delivered on: 20.01.2023

+ CM(M) 882/2022 & CM APPL. 37904/2022

DEEPAK ARORA Petitioner

versus

LAL SONS Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rishi Sood, Advocate.

For the Respondent : Mr. Deep Dhamija and Mr. Rakesh Gupta,
Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 20.07.2022, whereby the learned Trial Court has rejected the condonation of delay application seeking condonation of delay in filing the written statement on record. To be noted, the impugned order arises from a Commercial Suit pending before the learned Trial Court.

2. Mr. Rishi Sood, learned counsel appears for the petitioner and submits that the summon of the suit was received by the petitioner on 10.03.2022. The next date of hearing as per the summons was 27.04.2022. On 27.04.2022, the learned Presiding Officer ('PO') of the learned Trial Court was on leave and, therefore, no proceedings were

undertaken on that date.

3. Learned counsel submits that an SMS requesting complete copy of the suit be supplied to the counsel for the petitioner was sent to the counsel for the respondent/ plaintiff.

4. Learned counsel for the respondent/ plaintiff disputes this aspect.

5. Learned counsel for the petitioner submits that on 16.05.2022, an email was sent to the counsel for the respondent/ plaintiff seeking clear copies of the suit as well as the documents annexed thereto.

6. On 17.05.2022, by way of three separate emails, the counsel for the respondent/ plaintiff had sent the clear copies of the suit as well as the documents to the counsel for the petitioner.

7. Counsel for the petitioner submits that the written statement thereafter was supplied to the counsel for the respondent on 19.07.2022 and finally the written statement was filed before the learned Trial Court on 20.07.2022.

8. Learned counsel also submits that the petitioner/ defendant had suffered from COVID-19 during the month of June 2022, particularly, from 15.06.2022 to 25.06.2022 and on that account too the filing of the written statement was delayed.

9. Learned counsel submits that without considering the aforesaid facts, the learned Trial Court passed the impugned order.

10. Per contra, Mr. Deep Dhamija, learned counsel for the respondent refuted the facts as narrated above and submits that he never received the SMS stated to have been sent on 27.04.2022 to him. Therefore, the question of reckoning the date of 27.04.2022 to be attributable as failure of the plaintiff to supply fresh copies of the plaint along with the

documents, cannot be placed upon the counsel for the respondent/ plaintiff.

11. Mr. Dhamija further submits that though on 16.05.2022 an email, as stated above, was received by his office, however, without wasting any time immediately on 17.05.2022, the entire paper book of the suit along with the annexures was sent by way of three separate emails since the documents were bulky and ambiguous.

12. Mr. Dhamija submits that irrespective of the aforesaid, the learned Trial Court while passing the impugned order had noted that there is no explanation provided by the petitioner for non-filing of the written statement as well as of no demand having been raised or an objection to not having received the clear copies of either the suit or the documents annexed thereto, from 10.03.2022 through till 16.05.2022.

13. He further submits that even if this Court would consider the receipt of the complete copies on 17.05.2022, nothing precluded the petitioner from filing the written statement within the stipulated period of 120 days, which has to be reckoned from 10.03.2022.

14. Mr. Dhamija further submits that in view of the aforesaid facts, there is no requirement for this Court to interfere with the impugned order and seeks dismissal of the petition with heavy costs.

15. This Court has considered the arguments addressed by learned counsels for the parties, and has also examined the documents placed on record.

16. The petitioner claims that the counsel for the petitioner had sent an SMS on 27.04.2022 for which there was no response from the counsel for the respondent/ plaintiff.

17. Be that as it may, the email which was sent on 16.05.2022 on behalf of the petitioner/defendant was immediately reverted back by the counsel for the respondent/ plaintiff on 17.05.2022, whereby the complete set of suit along with the documents appended thereto were provided on the said date.

18. The illness of the petitioner may not have much relevance to the facts as have been narrated above and, therefore, are not considered for passing the present order.

19. It is not disputed that finally the petitioner/ defendant had filed its written statement on 20.07.2022 after having supplied the copy of the same to the learned counsel for the respondent/ plaintiff on 19.07.2022.

20. Though this Court has held that the date of service of summons is sanctimonious for the purpose of reckoning the date of filing of the written statement in respect of a Commercial Suit, which is 120 days as mandated by law, however, in the present case since the complete set of copies of the plaint along with documents were furnished to it only on 17.05.2022, the filing of the written statement on 20.07.2022 no doubt is beyond 30 days period, however, are still within the extended period of 120 days as per the amended provisions of CPC.

21. Yet another relevant aspect to be considered is the fact that in the absence of clear and legible copies of the documents, and that too running into more than 600 pages, would also be a factor which weighs in favour of the petitioner. No litigant can be expected to respond to unclear and illegible documents.

22. In view of the above, this Court is of the considered opinion that the written statement has been filed within the period as stipulated by

the amended provisions of CPC under the Commercial Courts Act, 2015.

23. The learned Trial Court is directed to take the written statement as filed by the petitioner/ defendant on record and proceed with the matter. These directions are subject to the petitioner paying a cost of Rs. 25,000/- to the respondent/ plaintiff on or before 31.01.2023.

24. It is made clear that non-payment of cost on or before 31.01.2023, shall automatically entail the vacation of the present directions and the written statement shall not be taken on record.

25. The relevant bank details of the respondent/ plaintiff may be provided to the counsel for the petitioner within one week from today.

26. The petition is disposed of in above terms.

TUSHAR RAO GEDELA, J .

JANUARY 20, 2023/nd