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

% **Date of order : 20th October, 2023**

\+ C.R.P. 305/2023, CM APPL. 55329/2023, 55330/2023 & 55331/2023

KUNAL STRUCTURE INDIA PVT LTD AND ANR & ANR.
..... Petitioners

Through: Mr. Anam Siddiqui, Mr. Yash Mishra and Mr. Anuj Rathee, Advocates.

versus

INSTAPOWER LIMITED ..... Respondent

Through: Ms. Sonali Chopra and Mr. Sahil Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908, praying as follows:

> *"a) Allow the present Petition and set aside the impugned order dated 17.08.2023 in CS Comm. No. 163 of 2023.*
> *b) Allow the Petitioner for filing the Written statement before the Ld. Trial Court in CS Comm. No. 163 of 2023."*

2. The petitioner, on a recommendation made by the Department of Indian Railway Stations Development Corporation (hereinafter "IRSDC") entered into a contract with the respondent, thereby, appointing it as a sub-contractor for carrying out works and making supplies for Gandhi Nagar

Railway Station under the project of conceptualization, planning, design and sourcing of various electrical items for re-development of Gandhinagar Railway Station.

3. The contract entered into by the parties was on Back-to-Back basis and a purchase order bearing No. 4500001472 and 4500001473 was placed by the petitioner to the respondent for the said project.

4. Thereafter, letter bearing No. GARUD/GNC/KSIPL/51-B/2019/1318, dated 26th July 2022, was sent by Gandhi Nagar Railway & Urban Development Corporation Ltd. to the petitioner for defects liability period (hereinafter "DLP") works of the re-development of the Gandhi Nagar Railway Station and letter dated 27th March 2023, requesting for pending snag list, documents and DLP and the said bills of the petitioner were not cleared by the IRSDC, resulting in non-payment to the respondent.

5. Aggrieved by the non-payment, the respondent filed civil suit bearing No. 163/2023 and a copy of the same was served upon the respondent on 29th March 2023, however, the petitioner could not file his written statement within the statutory period of 120 days.

6. The learned Trial Court *vide* order dated 17th August 2023, (hereinafter "impugned order") closed the right of the petitioner to file the written statement.

7. On 20th September 2023, the petitioner e-filed the written statement along with an application for condonation of delay and the same was dismissed by the learned Trial Court *vide* order dated 22nd September 2023,

whereby, the learned Court dismissed the application for recall of the impugned order.

8. Aggrieved by the impugned order and order dated 22nd September 2023, the petitioner has preferred the instant petition,

9. Learned counsel appearing on behalf of the petitioner submitted that the suit bearing No. 163/2023, filed by the respondent, is a pressure tactic and has been filed solely to harass the petitioner in pursuance of fulfilling its illegal demand of remaining amount of Rs.71,29,504/-, which was to be paid under as per back-to-back contract which could not be paid as the petitioner has not received the said payment from its client.

10. It is submitted that the respondent sent excess quantities of the electrical equipment and other materials which lead to the overcharge that had occurred and the same was only verified by the petitioner upon various site visits. It is additionally submitted that along with the excess items, the respondent had also provided certain items which were unrelated to the requirements as illustrated in the purchase orders.

11. It is also submitted that upon a bare perusal of the invoice, the petitioner noticed that the total amount charged for the lighting supplies was considerably higher than the requirement of the supplies for the said project, moreover, the additional charges were not justified, i.e., the supply of unnecessary items which were not needed and the service charge for those items. However, the petitioner has been billed for unnecessary and unrequested items. This blatant overcharging is not only unfair but also

affects the trust the petitioner and the IRSDC had in respondent's company as a valued customer.

12. It is submitted that the written statement could not be filed within the statutory time period of 120 days only due to the reason that the concerned officials, handling the project for the petitioner had resigned from their position and hence, the petitioner could not trace the requisite documents in a timely manner. In order to substantiate his arguments that the instant case fulfils the criteria for condonation of delay has been described, learned counsel for the petitioner relied on case titled ***Perumon Bhagvathy Devaswom v. Bhargavi Amma,* (2008) 8 SCC 321.**

13. It is submitted that the said delay is not deliberate and the learned Trial Court failed to appreciate the fact that the said contract was on a back-to-back contract.

14. It is further submitted that the dismissal of the petitioner's application has resulted in a violation of the principle of natural justice.

15. In view of the foregoing submissions, it is prayed that the present petition may be allowed and the order dated 17th August 2023, be set aside.

16. *Per contra,* learned counsel appearing on behalf of the respondent vehemently opposed the arguments advanced on behalf the petitioner submitting to the effect that the application filed to take on record the written statement of the petitioner herein has been rightfully dismissed by the learned Trial Court as the same has been done at a belated stage and after the expiry of the statutory period of 120 days.

17. It is submitted that as per Order VIII Rule 1 of the Code of Civil Procedure (hereinafter "CPC"), there is a period of 120 days provided to the defendant to file the written statement.

18. It is further submitted that the Courts may condone the delay in filing of the written statement only in cases wherein an exceptional case has been established and not in cases where there has been negligence on behalf of the parties. In the instant matter, there has been a gross negligence on the part of the petitioner.

19. In view of the foregoing, it is submitted that the present petition may be dismissed.

20. Heard the parties and perused the record.

21. It is the case of the petitioner that the learned Trial Court dismissed the application of the petitioner to take on record the written statement after expiry of the statutory period of 120 days.

22. In order to adjudicate the present petition, it is imperative to analyse the provision governing written statements i.e., Order VIII Rule 1 of the CPC. The said provision has been reproduced herein:

> ***"1. Written Statement.***—*The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.] **
>
> *[Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be*

allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]"

23. A reading of the aforementioned provision makes it crystal clear that the maximum time period provided to the defendant to file their written statement is 120 days from the date of services of summons.

24. The law regarding the Courts intervention with regard to condoning delay in filing the written statement is very well settled. The Hon'ble Supreme Court in a catena of judgments has analysed the scope of Order VIII Rule 1 of CPC vis-à-vis the Courts' power to interfere with the same. In case titled ***Zolba v. Keshao, (2008) 11 SCC,*** the Hon'ble Supreme Court reaffirmed the settled legal principle in ***Salem Advocate Bar Assn. v. Union of India*** **(2005) 6 SCC 344,** thereby stating that the abovesaid proviso is not mandatory but directory in nature. The relevant portion of the judgment has been reproduced herein:

14. In Salem Advocate Bar Assn. v. Union of India [(2005) 6 SCC 344 : AIR 2005 SC 3353] it has been clearly held that the provisions including the proviso to Order 8 Rule 1 CPC are not mandatory but directory. It has been held in that decision that the delay can be condoned and the written statement can be accepted even after the expiry of 90 days from the date of service of summons in exceptionally hard cases. It has also been held in that decision that the use of the word "shall" in

Order 8 Rule 1 CPC by itself is not conclusive to determine whether the provision is mandatory or directory. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the decision in that case, the same can be construed as directory. In AIR para 21 of the said decision, this Court observed as follows : (SCC p. 364, para 20)

"20. The use of the word 'shall' in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

25. The abovesaid cases make it clear that the Court can only accept the written statement after the expiry of the statutory period in cases exhibiting exceptional circumstances. Similarly, the Hon'ble Supreme Court in case titled ***Atcom Technologies Limited* v. *Y.A. Chunawala and Company* (2005) 4 SCC 480,** it was observed that the casual attitude of the defendant, while filing a written statement cannot be entertained by Courts, while allowing the same beyond the prescribed time limit.

26. Since this Court has discussed the facts of the instant case in the foregoing paragraphs, it will only be prudent to further discuss the scope of the Section 115 of the CPC, which has been invoked by the petitioner in the present petition, thereby, asking this Court to exercise its revisional powers by deciding whether the learned Court below had exercised its jurisdiction illegally or irregularly.

27. Since it is observed that there is no infirmity in the impugned order which is under the challenge before this Court, therefore at this stage; it becomes pertinent to examine the scope of the revisional jurisdiction of this Court under Section 115 of the CPC. The Hon'ble Supreme Court in ***Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar,*** **(2017) 14 SCC 132,** propounded that the High Court cannot interfere with the factual findings of a Trial Court in exercise of its revisional jurisdiction. Such jurisdiction remains restricted to cases wherein there is an irregular exercise of jurisdiction by the subordinate Courts.

28. Similarly in the case of ***ITI Ltd. v. Siemens Public Communications Network Ltd.***, **(2002) 5 SCC 510**, the Hon'ble Supreme Court vis-à-vis the scope of Section 115 of the CPC, held that the supervisory or revisional jurisdiction exercised by the High Court is limited to the purpose of correcting jurisdictional error, if any, committed by a subordinate Court.

29. At this juncture it becomes imperative to analyse the impugned order dated 17th August 2023 and the subsequent order dated 22nd September 2023. The relevant portion of the said orders has been reproduced as under:

"Defendant was served on 29.03.2023. However, no

Written Statement was filed on behalf of the defendant within the statutory period of 120 days from the date of service.
In the circumstances, right of the defendant to file the Written Statement stands closed.
An application earlier filed on behalf of the plaintiff under Order 8 Rule 10 CPC is pending.
In view of the appearance of the counsel for the defendant, the application is kept pending.
However, plaintiff shall lead uncontested PE on 22.09.202

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<u>Defendant's application seeking permission to file Written Statement.</u>
However, an application has been filed on behalf of the defendant seeking permission to file the Written Statement on behalf of the defendant.
Learned counsel for the defendant has stated that the Written Statement could not be filed within the statutory period of 120 days as various documents were required to be collected to file the Written Statement, which took time and hence, the delay in filing of the Written Statement took place.
Heard learned counsel for the defendant.
Admittedly, the defendant was served on 29.03.2023.
According to Order 8 Rule 1 CPC, the Written Statement could have been filed within the maximum period of 120 days.
Admittedly, the Written Statement was not filed within the said statutory period of 120 days. This Court has no power to admit a Written Statement filed after lapse of the said statutory period of 120 days.
In the circumstances, the application moved today is without merit and it is hereby dismissed."

30. As per the impugned order, the petitioner was served on 29th March 2023, therefore, as per the abovesaid provision, the time period for filing the

written statement expired on 27th June 2023, and the petitioner chose to file his written statement on 20th September 2023, i.e., 175 days after summons were served or 55 days after the expiry of the statutory time period. In view of the foregoing discussions and bearing in mind the settled legal principles, it is evident that the petitioner has indeed filed his written statement beyond the expiry of the statutory period. The petitioner/defendant was served on 29th March 2023, and the written statement was filed on 20th September 2023, i.e., 55 days after the statutory period had lapsed. As established above, the Courts can only allow the written statement beyond the 120 days in the event that the case presented by the petitioner/defendant exhibits circumstances which are extraordinary and there are satisfactory reasons provided for such delay. The learned Trial Court has correctly passed the impugned order, stating to the effect that it did not have the power to allow the written statement after lapse of the statutory period.

31. The petitioner herein has contended that it was due to resignation of certain employees working on the project associated with the suit, that the petitioner could not locate the requisite documents which led to delay in filing the written statement. The explanation provided by the petitioner herein is not a case of an exceptional circumstance but is that of a casual attitude at the hands of the petitioner in not filing the written statement within the prescribed time limit, therefore, the impugned order dated 17th August 2023, does not warrant any intervention.

32. Since the petitioner has failed to make his case seeking revision, and in the absence of any infirmity in the exercise of jurisdiction by the learned

Court below, the impugned order dated 17th August 2023, passed in suit bearing no. CS Comm. No. 163 of 2023 is hereby upheld.

33. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

34. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 20, 2023
SV/Ds/db

Click here to check corrigendum, if any