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

Date of decision: 21.11.2023

+ **CM(M) 1919/2023, CAV 595/2023, CM APPL. 60012/2023 & CM APPL. 60013/2023**

RITESH CHAUHAN

..... Petitioner

Through: Mr. Harsh Vardhan Sharma, Adv.

versus

RITA BALWANI

..... Respondent

Through: Mr. Rajiv K. Garg, Mr. Shiven Banga
and Mr. Ashish Garg, Advocates.

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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. The present petition filed under Article 227 of the Constitution of India impugns the order dated 27.10.2023 passed by the DJ (Comm) Central, Tis Hazari Courts Delhi in suit no. CS(Comm) No. 5498/2021 titled as *Rita Balwani v. Ritesh Chauhan* ('Trial Court').

1.1 The Trial Court by its impugned order dismissed the application filed under Order VIII Rule 1 read with Section 151 of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015 ('Act of 2015') seeking enlargement of time to file the written statement. The Trial Court held that the right of the defendant to file written statement stands forfeited.

1.2 The Petitioner is the original defendant and the Respondent is original



plaintiff before the Trial Court. The suit has been filed by the Respondent seeking a recovery of 1,29,31,783.50/- along with interest on delayed payment against the Petitioner herein under the provisions of the Act of 2015.

2. Learned Counsel for the Petitioner states that the counsel for the Petitioner appearing before the Trial Court had initially filed an application under Section 151 of CPC on 28.05.2022 and had sought a copy of the plaint along with documents for preparing a written statement, since the Petitioner was only served with the copy of summons but not with the copy of the paper book.

2.1 He states that on 28.05.2022 Trial Court directed the Respondent to supply the plaint along with all the documents to the Petitioner. He states that the written statement has, thereafter, been filed on 19.07.2022, however, the Trial Court failed to take the written statement on record. He states that the period of limitation should be reckoned from 28.05.2022 and the delay beyond the initial period of thirty (30) days be condoned in lieu of the intervening court vacation for summers.

3. In reply, learned counsel for the Respondent who appears on advance service states that summons along with entire paper book were duly served on the Petitioner herein on 15.02.2022, and this is duly borne out from the Process Server Report available on record. He states that the statutory period of 120 days as per Order VIII Rule 1 of the CPC as amended by the Act of 2015 expired on 16.06.2022; and even after excluding the period of summer vacation, the said extended period time expired on 01.07.2022.

3.1 He states that, however, since the written statement has been filed on 19.07.2022, the Petitioner herein has forfeited his right in terms of the Proviso to order VIII Rule 1 CPC as amended by the Act of 2015.



4. This Court has considered the submissions of the parties and perused the record.
5. In this petition, the report of the process server dated 15.02.2022 has been annexed at Annexure P-6. The said report records that the summons along with the entire paper book has been served on the email address krishnatrading2014@gmail.com.
6. The Petitioner who is present in person, on enquiry, confirms that an e-mail as per the said report of the process-server was duly received by him at the e-mail address mentioned therein. He confirms that the plaint and the paper book is duly attached to the said e-mail and is accessible on clicking the said document.
7. In view of the report of the process-server, and the confirmation by the Petitioner herein, it is a matter of record that the Petitioner i.e., defendant stood duly served on 15.02.2022.
8. In view of the said admitted facts, the application dated 28.05.2022 filed by the defendant and the order of the Trial Court dated 28.05.2022 directing the plaintiff to provide with an additional copy of the plaint and the documents, would not determine the starting point of limitation.
9. This Court is refraining from initiating any adverse action against the Petitioner herein for making incorrect statement in his application dated 28.05.2022 as well as in this petition filed on 10.11.2023, wherein, it has been wrongly stated that no paper-book was received by e-mail on 15.02.2022.
10. In the facts of the case, since the Petitioner was duly served on 15.02.2022 and the statutory period of 120 days expired on 16.06.2022, therefore, the filing of the written statement on 19.07.2022 is beyond the statutory period of limitation.



10.1. Accordingly, the Trial Court's order dated 27.10.2023 following the judgment of the Hon'ble Supreme Court in *SCG Contracts India Pvt. Ltd. vs. K. S. Chamankar Infrastructure Pvt. Ltd. and Ors.* reported in (2019) 12 SCC 210, is correct in fact and law.

11. There is no error in the impugned order warranting interfering in the supervisory correction, in exercise of Article 227 jurisdiction of this Court. For the aforesaid reasons, this petition is completely devoid of merit and is accordingly dismissed. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

NOVEMBER 21, 2023

Aks/ms

