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

Date of decision: 13.12.2023

+ CM(M) 2053/2023 & CM APPL. 64414/2023

SHALINI GOLA

..... Petitioner

Through: Mr. Pradeep Teotia and Mr. Gaurav Dalal, Advocates

versus

ANAND GOYAL

..... 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. 64415/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 2053/2023 & CM APPL. 64414/2023

1. This petition filed under Article 227 of the Constitution of India impugns the orders dated 20.12.2022 and 03.11.2023 passed by District Judge (Commercial Court), Shahdara District, Karkardooma Courts, Delhi ('Trial Court') in CS (COMM.) No. 566/2022, titled as **Anand Goyal v. Ms. Shalini Gola**.

1.1. The Petitioner here is the defendant and the Respondent herein is the



plaintiff before the Trial Court.

1.2. The summons of the commercial suit filed for recovery of possession and arrears of rent by the Respondent herein was served upon the Petitioner on 16.11.2022.

1.3. The Trial Court vide first impugned order dated 20.12.2022 recorded that the defendant i.e., Petitioner herein despite due service of summons on 16.11.2022 had failed to file her written statement and therefore, closed her right to file the written statement and proceeded ex-parte.

1.4. The counsel for the Petitioner filed an application on under Order IX Rule 7 of the Code of Civil Procedure, 1908 ('CPC') on 26.09.2023 seeking setting aside of the ex-parte order dated 20.12.2022. The receipt of the summons was not disputed. The ground urged in the said application was that the previous counsel for the Petitioner before the Trial Court was not diligent in conducting the case on behalf of the Petitioner herein i.e., defendant.

1.5. The Trial Court vide second impugned order dated 03.11.2023 has dismissed the application filed by the Petitioner under Order IX Rule 7 CPC.

2. The learned counsel for the Petitioner states that there is no dispute that the summons in the suit were duly served on 16.11.2022 and again 19.12.2022 as recorded in the impugned order dated 03.11.2023. The order dated 03.11.2023 reads as under: -

*"Perusal of record shows that summons were directed to be issued to the defendant vide order dated 02.11.2022 and the matter was directed to be put up for 23.11.2022. On 23.11.2022, none has appeared for the defendant despite repeated calls and waiting till 12:10 pm and **despite service of summons on 16.11.2022. As 30 days stipulated period for filing of WS had not expired, therefore, it was directed that WS be filed within the stipulated period of 30 days.***

Further, as the plaintiff had pressed for interim injunction and



*defendant had failed to appear despite service, the application of the plaintiff under Order XXXIX Rule 1 and 2 CPC was disposed of and defendant was restrained from creating any third party interest or part with possession of the suit premises i.e. Shop of Ground Floor in the name of M/s Balaji Collection at C-339, Vivek Vihar, Phase-I, Delhi-95, Further, as defendant had failed to appear, it was further directed that the copy of the order be sent to the defendant through Process Server for intimation and compliance on filing of PF. **PF was filed and the said notice was also received by the defendant on 19.12.2022.** On the notice, defendant had signed as a token on receiving of the notice and has also made an endorsement "2+1" which shows that copy of order was also served alongwith the notice. On the summons sent for the date 23.11.2022 which were received by the defendant on 16.11.2022 also there is an endorsement made by the defendant as 'page 40+1'. Thus, the defendant was clearly served on 16.11.2022 with the summons of the suit and plaint and again on 19.12.2022 with the order of the Court dated 23.11.2022.*

*The defendant has taken plea that the previous counsel had assured her that he will appear and will inform the defendant about the Court proceedings. Needless to mention here that, even the name of the previous counsel has not been stated by the defendant. No proof has been filed along-with application to show that the defendant was constantly in-touch with the said previous counsel or was asking previous counsel about the case status. Even, otherwise, the prayer itself is defective inasmuch as the prayer has been made for setting aside the ex parte order dated 16.1 1.2022. The ex parte order is in fact dated 20.12.2022 and not dated 16.1 1.2022. In fact, there was no date fixed by the Court on 16.11.2022 and on 16.11.2022, the defendant had received the summons of the suit alongwith copy of the plaint i.e. 40 pages. The case was at the stage of final arguments after leading of the evidence when the defendant has suddenly appeared and has filed this application under Order IX Rule 7 CPC. **Clearly the defendants were watching the proceedings and it was only when they felt that the suit was about to be disposed of, that the present application was filed under Order IX Rule 7 CPC.** It is also an admitted fact that the defendant has received the summons of the suit on 16.11.2022. No separate application for condonation of delay in filing the application under Order IX Rule 7 CPC has been filed.*

*The averments in the application under Order IX Rule 7 CPC filed by the defendant does not inspire confidence. **The defendant has deliberately chosen not to appear in the Court despite service of summons and must face the consequences for the same.***

(Emphasis supplied)

2.1. He states, however, Petitioner was unable to file the written statement as the previous counsel engaged by her, failed to file the written statement.



2.2. He states that no written statement has been filed before the Trial Court till date on record.

2.3. He further admits that though this is a suit filed for recovery of possession and arrears of rent, the Petitioner herein has admittedly stopped paying the rent and is presently in arrears of admitted rent.

2.4. He states, however, in the interest of justice, this Court should interfere in this matter and allow an opportunity to the Petitioner herein to file her written statement.

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

4. In view of the admission of the Petitioner that she was duly served with summons on 16.11.2022 and again on 19.12.2022; there is no infirmity in the order of the Trial Court dated 20.12.2022, closing right of the defendant i.e., Petitioner to file the written statement.

5. The Petitioner herein has also shown lack of diligence by not filing written statement within the statutory period of 30 days and the extended period of 90 days beyond the initial period. As noted above, no written statement has been filed till date despite passage of one year.

6. The Petitioner is admittedly in default of payment of rent to the landlord and therefore, it is apparent that the Petitioner has deliberately not participating in the suit proceedings, to delay the same.

7. In view of the provisions of Order VIII Rule 1 of CPC as amended by the Commercial Courts Act, 2015 and the authoritative judgement of the Supreme Court in ***SCG Contracts India Private Limited v. K.S. Chamankar Infrastructure Limited, (2019) 12 SCC 210***, the right of the Petitioner herein to file her written statement stands forfeited, as 120 days have since



passed.

8. Accordingly, there is no merit in this petition and the same stands dismissed.

9. Pending application if any stands disposed of.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 13, 2023/rhc/sk

Click here to check corrigendum, if any