Serial No. 1
Supplementary Causelist I

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

FAO(D) 2/2014
CM 2760/2024
Caveat 814/2024

Gulkund Hues Private Limited …Petitioner(s)

Through: Mr. A.H. Naik, Sr. Advocate with
Mr. Zia Ahmad Shah, Advocate

Vs.

Anita Mehta ...Respondent(s)

Through: Mr. Faheem Nisar Shah, G.A.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.
HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE.

ORDER
30.05.2024

Caveat stands discharged.

The instant appeal is directed against an order dated 12th March, 2024, passed by the Court of Additional District Judge (Bank Cases), Srinagar ["the Commercial Court"] in file No. 02/M titled "*Anita Mehta Vs. Gulkund Hues Private Limited and Another",* whereby the Commercial Court has allowed the application of the petitioners for setting aside/recall of exparte order dated 8th April, 2023, but has closed the right of the petitioners to file written statement.

The impugned order is assailed by the petitioners primarily on the ground that once the Commercial Court sets aside the exparte proceedings initiated against the petitioners (defendants in the suit) vide order dated 8th April, 2023, the necessary consequence whereof was to relegate the petitioners to the position as it existed on the date fixed for appearance of the petitioners consequent upon the service of summons.

The appeal is opposed by Mr. Faheem Nisar Shah, learned GA appearing for the respondent on the ground that the learned trial Court has throughout the impugned order held that the petitioners had the knowledge of pendency of the suit and yet proceeded to set aside order dated 8th April, 2023, without indicating any reason. Learned counsel for the respondents

supports the order of the trial Court insofar as it closes the right of the petitioners to file the written statement on the ground that the written statement could not be permitted to be filed after 120 days of the service of the petitioners.

We have considered the rival contentions and perused the material on record, it is seen that the order impugned is self-contradictory and throws up irreconcilable position. The Commercial Court has allowed the application of the petitioners and set aside the exparte proceedings initiated vide order dated 8th April, 2023, subject to the payment of exemplary costs of Rs. 10,000/- and at the same time has closed the right of the petitioners to file their written statement on the ground that written statement cannot be permitted to be filed beyond 120 days.

We are in agreement with the learned counsel for the petitioners that once the trial Court sets aside the exparte proceedings, the necessary consequence would be that the party proceeded exparte would be relegated to the position as it existed on the date fixed for appearance of such party consequent upon service of summons in the suit. In the instant case the exparte proceedings initiated against the petitioners have been set aside by the Commercial Court on 12th March, 2024, and it is this day from where the time to file written statement is required to be reckoned. The Commercial Court could not have closed the right of the petitioners to file their written statement on the ground that filing of written statement was not permissible after expiry of 120 days. The statutory period for filing the written statement would start from the date the petitioners (the defendants in the suit) cause their appearance in the suit pursuant to the summons served upon them.

Since the Court has set aside the exparte proceedings as such it is to be presumed and accepted that petitioners were never served in the suit. That being the position, the time to file written statement cannot be said to have expired even before the exparte proceedings are set aside and the petitioners are permitted to contest the suit. The trial Court has not appreciated this aspect in the correct perspective and thus landed in serious error of law by directing the closure of right of the petitioners to file the written statement after setting aside the exparte proceedings initiated by it vide order dated 8th April, 2023.

For the foregoing reasons, we allow this appeal and set aside the impugned order to the extent it closes the right of the petitioners to file the written statement. The petitioners shall be within their right to file the written statement within the statutory period provided therefor to be reckoned w.e.f. 12th March, 2024, that is the date on which the exparte proceedings initiated against the petitioners on 8th April, 2023 have been set aside. We make it clear that while disposing of this appeal, we have not given our imprimatur to the other findings and observations made in the impugned order.

Disposed of.

(SINDHU SHARMA) JUDGE **(SANJEEV KUMAR) JUDGE**

SRINAGAR:
30.05.2024
"Mir Arif"

HIGH COURT
JAMMU & KASHMIR AND LADAKH

MIR ARIF MANZOOR
I attest to the accuracy and
authenticity of this document

31.05.2024