



\$~29

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

+ CM(M) 103/2024

RAHUL WADHWA

..... Petitioner

Through: Ms. Surbhi Mehta and Mr. Chandan
Rai Chawla, Advs.

versus

BRINDCO SALES PRIVATE LIMITED

..... Respondent

Through: Mr. Vibhor Kush, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **08.02.2024**

1. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 06.12.2023 passed by the learned Additional District Judge -01, (South-East), Saket Court, New Delhi (hereinafter as "Trial Court") in MISC DJ No. 155/2019 titled "*M/s. Brindco Sales Pvt. Ltd. Vs. Rahul Wadhwa*", whereby the learned Trial Court closed the right of the petitioner herein to file the written statement.
2. The learned counsel for the respondent submits that no reply is to be filed and the counsels for the parties are willing to address the arguments.
3. Heard & record perused.
4. Learned counsel for petitioner submits that respondent herein filed a suit bearing no. CS - 1556/2017 titled as "*M/s Brindco Sales Private Limited vs. Rahul Wadhwa*", for recovery for Rs. 61,56,600/- along with interest against the petitioner.
5. Petitioner was not served with the summons of the suit, however, was proceeded *ex parte* vide order dated 22.02.2019. The petitioner came to know about the *ex parte* order in August, 2019 though an e-mail sent by one of the directors of the respondent company. Immediately thereafter, the



petitioner inspected the records and moved an application under Order IX Rule 13 which was allowed and the *ex parte* order was set aside vide order dated 26.08.2023, and the petitioner was granted 30 days time to file the written statements.

6. The learned counsel submits that unfortunately within the said period, the petitioner failed to file the written statement and was granted three more days subject to cost of Rs. 10,000/- to file the written statement vide order dated 21.10.2023.

7. The petitioner though deposited the part cost with Delhi Legal Service Authority as directed by the learned Trial Court but the remaining cost was to be paid to the opposite side which is yet to be paid. However, the written statement could not be filed by the petitioner within three days as directed by the Court as the petitioner was travelling and the counsel for the petitioner was unwell.

8. Learned counsel submits on account of said unforeseen that the written statement could not be filed by petitioner and his right to file written statement was closed, the learned Trial Court failed to consider the aforesaid peculiar circumstance which prevented him from filing the written statement. Learned counsel further submits that grave prejudice shall be caused to the defense of the petitioner in case the impugned order dated 06.12.2023 is not set aside and the petitioner is not granted an opportunity to file the written statement on record.

9. The learned counsel for respondent raises strong objections to the submissions made on behalf of the petitioner and submit that the petitioner has been negligent throughout the trial of the cases despite knowing about the filing of the present suit, he did not appear in the case and subsequently



moved on application for setting aside the exparte order. In fact, the filing of the present suit was also mentioned in one of the complaints filed by respondent under section 138 under Negotiable Instrument Act, 1881 against the petitioner and still petitioner kept sleeping over their rights to defend himself and therefore at this stage petitioner be not allowed to place the written statement on record as they could not point out any illegality in the impugned order. The learned Trial Court liberally granted opportunities to the petitioner to file his written statement but petitioner has not been serious to defend the case, and is deliberately delaying the matter, thus the petitioner be dismissed.

10. Pertinently, the learned Trial Court has mentioned about the conduct of the petitioner in not filing the written statement and has observed in the impugned order dated 06.12.2023, as herein under:

“Perusal of the record reveals that the application which was pending since 20 19 was finally allowed in 2023. However, the defendant has not filed the written statement despite clear time line being given to him and despite two opportunities being given. Even today, the defendant was not filed any written statement and is only seeking further time. Thus, neither the defendant has shown any cause for the delay caused, not he has shown any bona fide by filing the written statement today. Mere statement that written statement is ready but could not be signed is just a bald assertion without any basis and the defendant will not give any benefit to the defendant.”

11. From the record, it cannot be disputed that the petitioner has been negligent in not filing the written statement within the stipulated period of time and thereafter within the time granted by the learned Trial Court. However, in the interest of justice a single opportunity is granted to the



petitioner to file the written statement before the learned Trial Court on the dated already fixed before the learned Trial Court being 15.02.2024 subject to payment of cost of Rs. 30,000/- to be paid on the same date. The said cost shall include the balance cost which was to be paid as imposed by the learned Trial Court vide order dated 21.10.2020.

12. No further directions are required to be passed, accordingly, the present petition is disposed of.

SHALINDER KAUR, J.

FEBRUARY 08, 2024/SDS