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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 08.07.2024

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FAO(OS) (COMM) 52/2024**M/S BALAJI RUBBER INDUSTRIES AND ORS.....Appellants****Through: Mr Rakesh Kumar with Mr Gaurav
Pachauri, Advocates.****versus****M/S GREEN RUBBER INDIA****.....Respondent****Through: Ms Cherry Gupta with Mr Asim
Naeem, Advocates.****CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)**

1. This appeal is preferred against the judgment and order dated 01.02.2024, passed by the learned Single Judge.
2. The appellants/defendants preferred O.A. 16/2023 before the learned Single Judge to lay a challenge to the direction issued by the learned Registrar, *via* order dated 21.12.2022, whereby the right of the appellants/defendants to file a written statement was closed.
 - 2.1 The learned Single Judge, *via* the impugned order, dismissed the Chamber Appeal preferred by the appellants/defendants.
3. *Via* the order dated 02.04.2024, we had directed the Registry to place a report before us, having regard to the defects in the written statement filed on behalf of the appellants/defendants.



3.1 The Registry has placed its report dated 10.04.2024 before the Court.

4. A perusal of the report shows that as per the Registry, the appellants/defendants filed the written statement on 16.03.2022.

4.1. The written statement was returned by the Registry on account of a single objection raised by it on 22.03.2022.

4.2 The objection raised by the Registry was that one time process fee amounting to Rs.1,000/- had not been deposited.

5. The report also alludes to the fact that after depositing the process fee, the appellants/defendants filed their written statement after, nearly, nine (09) months i.e., on 14.12.2022. Thereupon, according to the report, the written statement filed by the appellants/defendants was again scrutinized by the Registry and was returned on 19.12.2022 with the following objections:

- (i) Pages not as per Index
- (ii) Proof of service not enclosed

6. Ms Cherry Gupta, learned counsel, who appears on behalf of the respondent/plaintiff, says that in the given circumstances, the delay in bringing on record the written statement ought not to be condoned.

6.1 Ms Gupta says that the written statement is still lying under objection.

7. On the other hand, Mr Rakesh Kumar, learned counsel, who appears on behalf of the appellants/defendants, says that the defects pointed out by the Registry could not be removed as the learned Registrar had closed the opportunity concerning the appellants'/defendants' right to place on the Court's record the written statement that is lying in the Registry, *albeit* under objections.

7.1 As regards the delay, Mr Kumar says that the earlier counsel delayed depositing the process fee to the prejudice of the appellants/defendants.



7.2 It is also Mr Kumar's submission that apart from service there is no defect as such in the written statement.

8. Ms Gupta is right that there has been substantial delay in removing the defects. However, as pointed out by Mr Kumar, the defect is not in the written statement but with regard to procedural aspects concerning service. The only other defect that the Registry has pointed out concerns the page number in the written statement not being aligned with the index.

9. Since the respondent/plaintiff has entered appearance, the service *qua* the written statement stands completed.

10. Thus, taking a holistic view in the matter, we are inclined to set aside the impugned order.

10.1 It is directed accordingly.

11. The appellants/defendants will ensure that the written statement, after removal of objection, is brought on record within one week, failing which it will not be taken on record.

12. Furthermore, the appellants/defendants will pay Rs.25,000/- as costs to the respondent/plaintiff.

12.1 The costs will be paid within the next one week. Proof of costs will be placed on record.

13. List the matter before the learned Registrar on 30.07.2024.

14. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JULY 8, 2024 /tr