



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

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Judgment reserved on: 09.05.2024

Judgment pronounced on: 10.05.2024

+ CM(M) 2535/2024, CM APPL. 27665/2024—stay

SH NEERAJ AHUJA

..... Petitioner

Through: Mr. Ajay Malhotra, Adv.

versus

AIPL ZORRO PVT LTD

..... Respondent

Through: Mr. Kartik Dabas, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The respondent herein had instituted a suit for recovery of Rs. 45,28,463/- bearing CS (COMM.) 472/23 titled as “*AIPL Zorro Pvt. Ltd. vs. Neeraj Ahuja*” against the petitioner herein on 30.07.2023 before the learned District Judge, Commercial Court-02, North West District, Rohini Courts, Delhi (hereinafter referred to as “*Trial Court*”). The suit has been contested by the petitioner by filing a written statement before the learned Trial Court on 15.09.2023.

2. On 07.12.2023, the petitioner filed an affidavit for admission denial of documents, which was taken on record and on 22.02.2024, the respondent filed a rejoinder to the written statement, which was also taken on record. However, vide order dated 22.02.2024, the learned Trial Court ordered for taking the written statement off the record while relying upon two judgments of this Court, which are as follows:



- i. Cosco International Pvt. Ltd. vs. Jagat Singh Dugar in CS (Comm.) 1052/2018 dated 20.04.2022.
 - ii. Unilin Beheer B.V. vs. Balaji Action Buildwell, decided on 15.05.2019.
3. The impugned order dated 22.02.2024 forms the crux of the present petition, which came to be filed under Article 227 of the Constitution of India, 1950 invoking supervisory jurisdiction of this Court.
4. Mr. Ajay Malhotra, learned counsel for the petitioner submitted that petitioner was served with summons of the suit on 17.07.2023 and had filed his written statement within a period of 120 days as provided under Order VIII Rule 1 on 15.09.2023. Subsequent thereto, he filed an affidavit of admission denial, which was also taken on record on 07.12.2023.
5. It was submitted that after much delay, the respondent filed a rejoinder to his written statement, which also forms part of the record. However, inadvertently, the learned Trial Court without considering all the above facts has suo-moto vide impugned order directed for removal of the written statement from the record by observing that affidavit of admission/denial is not filed which is already part of the record.
6. Refuting the arguments, Mr. Kartik Dabas, learned counsel for the respondent submitted that undoubtedly, the written statement was filed on record on 15.09.2023 but without any application seeking condonation of delay for filing the written statement beyond a period of 30 days. Moreover, the affidavit of admission denial filed by the petitioner was not filed with written statement and has been filed without filing an appropriate



application seeking condonation of delay, therefore, the learned Trial Court has rightly taken the written statement off the record.

7. Submissions heard. Record and impugned order perused.

8. For proper adjudication of the present petition, it is necessary to reproduce the impugned order, which is as follows:

"The WS in the matter was filed on 15.09.2023. Till date, the affidavit of admission/denial of documents has not been file.

In view of the law laid down by the Hon'ble High Court of Delhi in the cases titled as COSCO INTERNATIONAL PVT. LTD. VS. JAGAT SINGH DUGAR CS (COMM) 1052/2018, dt. 20.04.2022 and the case reported as, "CS (Comm.) No.1683/2016", titled as, "Unilin Beheer B. V V/s Balaji Action Buildwell", DOD: 15.05.2019, the WS filed in the matter cannot be taken on record.

Rejoinder has been filed by the plaintiff. Copy for the defendant has been retained on record.

List for consideration u/o 8, Rule 10 CPC now on 06.06.2024."

9. From a plain reading of the above impugned order, it is clear that the learned Trial Court has adopted a very casual approach in passing the said order. Contrary to the record, it is noted that as on 22.03.2024, the affidavit of admission denial of documents has not been filed and therefore, the written statement was ordered to be taken off the record.

10. Needless to say that Order VIII Rule 1 CPC deals with the procedure of filing the written statement, as amended by Commercial Courts Act, 2015, which reads as under:-

[1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

**[Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one*



hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]

11. It will also be apposite to extract relevant provisions relating to admission denial of documents, which is reproduced as under:

ORDER XI Disclosure, Discovery and inspection of documents in suits before the commercial division of a high court or a commercial court

4. Admission and denial of documents. — (1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

12. From the above, it can be seen that the learned Trial Court has not considered the above provisions or the record and has observed that the written statement cannot be taken on record since affidavit of admission/denial is not filed.

13. In view of the above, the impugned order dated 22.02.2024 is set aside. Learned Trial Court to reconsider the issue whether the written statement could form part of the record or not after giving an opportunity to both the parties of being heard on the said issue. The petitioner has instituted a commercial civil suit and so that no further delay is caused in the trial, the learned Trial Court to decide the said issue within a period of four weeks from today.

14. With above observations, the present petition along with pending application stands disposed of.

SHALINDER KAUR, J.

MAY 10, 2024/ss