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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 10th September, 2024*
+ CM(M) 686/2022 & CM APPL. 31446/2022
M/S SRI SHYAM INCORPORATION & ANR.Petitioner

Through: Mr. Parth Kaushik, Advocate
versus

M/S BANSAL SHOE FACTORYRespondent
Through: Mr. Tushar Kwatra, Advocate
(Through VC)

+ CM(M) 687/2022 & CM APPL. 31471/2022
M/S SRI SHYAM INCORPORATION & ANR.Petitioner

Through: Mr. Parth Kaushik, Advocate
versus

M/S SHREE BALAJI INDUSTRIESRespondent
Through: Mr. Tushar Kwatra, Advocate
(Through VC)

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

1. Petitioner is defending two commercial suits and has challenged order dated 16.03.2022 passed in both such suits whereby his defence has been struck off for the reason that he has not filed written statement.
2. I have heard both the sides.
3. Admittedly, defendant had put in appearance through his counsel before the learned Trial Court on 01.12.2021 and time of 15 days' was granted to him to file written statement with advance copy to the opposite side.
4. However, when the matter was taken up by the learned Trial Court on 16.03.2022, it noted that no written statement had been filed by the defendant.



Learned counsel for the plaintiff also apprised that he had not received any advance copy either and observing that the prescribed period for filing the written statement had expired, the defence was struck off.

5. Such order is under challenge.

6. Learned counsel for the petitioner/defendant has stated that period in question pertains to pandemic of Covid-19 and despite above, the written statement was placed before the learned Trial Court by dropping the same into a designated Drop-Box on 07.01.2022 but somehow that written statement has not seen the light of the day, for reasons beyond his control.

7. The prime contention, however, coming from the side of petitioner is that in view of specific observations made by Hon'ble Supreme Court *IN RE: Cognizance for Extension of Limitation: (2022) 3 SCC 117*, even otherwise the period falling from 15.03.2020 to 28.02.2022 was liable to be excluded and, therefore, further opportunity to file written statement should not have been declined to him as above said period was liable to be excluded.

8. Reference be made to *Prakash Corporates vs. Dee Vee Projects Limited: (2022) 5 SCC 112* wherein though it was held that the principle regarding timeline of mandatory period of 120 days was mandatory and binding, with little, or rather no discretion with the adjudicating authority for enlargement of such period, relaxation was given therein because of Covid-19 pandemic, which was treated to be an '*extraordinary situation/circumstance*'.

9. Mr. Tushar Kwatra, learned counsel for plaintiff has joined the proceedings through videoconferencing does admit that the period in question was falling during the pandemic of Covid-19. However, he disputes that any written statement was ever submitted in the manner as projected by the petitioner herein.



10. After hearing arguments for some time, learned counsel for respondent/ plaintiff states that he would have no objection if one opportunity in this regard is granted to the petitioner to submit physical copy of the written statement and to participate in the proceedings.

11. It is noticed that as per the averments made by the learned counsel for petitioner, original written statement had been submitted in Drop Box and, therefore, according to him, it will not be possible for him to submit the same hardcopy. He, however, states that he would submit fresh written statement, ad-verbatim, along with softcopy/scanned copy of such previous written statement in order to show and demonstrate that there is no change in the stand taken by him.

12. With the consent of the parties, it is directed that both the sides would appear before the learned Trial Court on 24.09.2024 at 2.00 PM and the hardcopy of fresh written statement and scanned copy/photocopy of the previous written statement along with the requisite documents, statement of truth and requisite affidavit shall be filed. A complete set thereof be also provided to the learned counsel for plaintiff.

13. Learned Trial Court shall proceed further with the matters in accordance with law.

14. Both the petitions stand disposed of in the aforesaid terms while also setting aside the impugned order dated 16.03.2022.

15. No order as to cost.

(MANOJ JAIN)
JUDGE

SEPTEMBER 10, 2024/dr