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

+ **CM(M) 2609/2024**

KULBHUSHAN YADAV

..... Petitioner

Through: Mr. Aditya Jain & Ms. Molvi Aijaz
Hussain, Advs.

versus

SUNIL KUMAR BHUTANI

..... Respondent

Through: Mr. Ankit Jain, Mr. Aditya Chauhan,
Ms. Apurva Tyagi & Ms. Divyanshu
Rathi, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER
20.05.2024

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CM APPL. 30145/2024, CM APPL. 30147/2024(exemptions)

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

CM(M) 2609/2024, CM APPL. 30146/2024--stay

3. Vide the present petition, the petitioner has sought to invoke the power of superintendence of this Court under Article 227 of the Constitution of India to assail the order dated 30.04.2024 passed by the Learned District Judge (Commercial Court), North District, Rohini Court, New Delhi ("Commercial Court") in CS (COMM) 530/2022 titled as "*Sunil Kumar Bhutani vs Kulbhushan Yadav @ Sanju*" whereby the application of the petitioner under Order VIII Rule 1 read with Section 151 of Code of Civil



Procedure, 1908 (“CPC”) was dismissed.

4. Mr. Aditya Jain, the learned counsel for the petitioner submits that the respondent herein filed the present commercial suit for recovery of Rs. 9,34,624 /- against the petitioner on 17.08.2022. Thereafter, the learned Commercial court issued summons to the Petitioner on 01.09.2022. The summons were received back as unserved and fresh summons were issued on 07.01.2023. Thereafter, the matter was listed before the learned Commercial Court for 18.05.2023 when the petitioner could not appear before the learned Commercial Court and the additional time to file the written statement was granted to the petitioner to file written statement in the Suit.

5. The learned counsel submits that written statement along with an application seeking condonation of delay of 81 days was filed on 23.05.2023. Matter was also referred to mediation in possibility of an amicable settlement on 20.09.2023, however the matter could not be settled. The same was observed in the order dated 23.01.2024 and the learned Commercial Court then posted the matter for arguments on the application for condonation of delay in filing the written statement. Vide the impugned order, the learned Commercial court dismissed the aforesaid application. Therefore, the petitioner was constrained to file the present petition.

6. Learned Counsel submits that in the present matter the Written Statement was filed within a period of 120 days as prescribed by the proviso to Order VIII Rule 1 CPC as amended by the Commercial Courts Act, 2015, which was not considered by the Learned Commercial Court.

7. The learned counsel further submits that there was a delay of 76 days as on 18.05.2023 and the learned Commercial Court was accommodating



the petitioner and granted additional time to file the same. The non-appearance on the said date was on account that the the petitioner forgot the date of hearing as was mentioned in the summons and was thus unable to appear on the said date.

8. Learned counsel also submits that the learned Commercial Court failed to consider that the delay occurred due to a human error and the petitioner has not adopted any delayed tactics which goes to show that the delay was unintentional. Moreover, the application seeking condonation of delay was filed in May, 2023 and the respondent filed their reply on the date of the impugned order that is after 11 months, thus they themselves have delayed the proceedings in the matter.

9. The learned counsel also relies on the following judgements:

- *SM Motorenteile GMBH vs A.A. Automobiles & Ors in CS(COMM) 553/2019.*
- *Green Line Punjab vs ITO (TDS) Ward in ITA 744/2018*
- *M/S Unilec Engineers Ltd. vs HPL Electric and Power Ltd in CM(M) 990/2023*

10. The learned counsel submits that the petitioner will suffer grave prejudice if the written statement is not permitted to be taken on record.

11. Issue notice.

12. Mr. Ankit Jain, the learned counsel appearing on advance notice on behalf of the respondent, accepts notice and submits that a short controversy has arisen in the present petition and therefore he is prepared to address arguments directly on the merits of the case.

13. Learned counsel for the respondent submits that as per the process server report dated 01.02.2023, the son of the petitioner who after asking his



father refused to accept the summons. Thus, the summons issued were refused by the petitioner to be accepted and there is no averment in the entire application of the petitioner that the report of the Process Server is incorrect. Therefore, the petitioner was served on 01.02.2023 and it was well within his knowledge that the written statement had to be filed within 30 days and at best could have been filed it by 02.03.2023, however, which was not done so and only filed it in May, 2023.

14. Learned counsel further submits that the application of the petitioner reads that the petitioner is a layman and forgot to appear on the date of hearing as was mentioned in the summons and thus could not appear before the Commercial Court. It is significant to note that the only reason provided by the petitioner in the application for condonation of delay in filing the written statement is for non-appearance before the Learned Commercial Court on 18.05.2023. But there is absolutely no explanation as to not filing the written statement within the prescribed time.

15. The learned counsel confuting the submission of the petitioner as to belated filing of the reply to the said application, submits that the order dated 20.09.2023 of the learned Commercial Court notes that upon joint request, the matter was referred to mediation and it is only on 23.01.2024, where the Court notes that the matter could not be settled through mediation and thus the matter was put up for reply and arguments on the said application of the petitioner. Therefore, the reply was filed at that stage and not on account of a deliberate delay thus the argument of the petitioner do not hold water.

16. Concluding the submissions, the learned counsel submits that the present case is a commercial suit wherein, the petitioner refuses to accept



summons. Moreover, the application filed by the petitioner is bereft of any explanation as to why the written statement was filed belatedly and not within 30 days from service of summons. Lastly, none of the judgements relied upon by the petitioner are not applicable as they pertain to verification of pleadings and not on the present issue before this court. Thus, the learned Commercial Court has rightly struck off the right of the petitioner to file written statement and no indulgence is required by this court with the impugned order of the learned Commercial Court.

17. Submissions heard, record as well as impugned order has been perused.

18. For a better grasp on the issue, it will be apposite to note the provision under Order VIII Rule 1 of the CPC which is reproduced 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 same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

19. It is also relevant to note that a proviso was substituted to Order VIII Rule 1 of the CPC which reads as follows:

“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 and 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.”

[Emphasis supplied]

20. Emphasis is further placed on yet another provision, Order VIII Rule 10 CPC, as follows:

“10. Procedure when party fails to present written statement called for by court.-Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

21. As such, while the normal time period for filing a written statement in response to a commercial suit would ideally be 30 days to expire from the date of service of summons, the written statement may be filed within a further period of 90 days subject to the reasons to be recorded in writing by the Court and payment of such costs as it deems fit to allow such written statement to come on record. Thus, in a commercial suit, the defendant shall forfeit the right to file the written statement beyond 120 days from the date



of service of summons. This is further emphasised by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days. Accordingly, in commercial suit no power vests in the court to condone the delay beyond 120 days.

22. This court is not oblivious that the intent of the Commercial Courts Act, 2015 is to expedite the proceedings in a Commercial Suit. The procedure stipulated under the said Act and the proposed amendments to the CPC are to provide for disposal of the suit in a time-bound manner. It is also well-settled that the rigours of the Commercial Courts Act, 2015 cannot be relaxed and have to be strictly adhered to.

23. Now reverting to the facts of the present case, admittedly, the service of the summons was effected on the petitioner on 01.02.2023 and the institution of the suit was well within the knowledge of the petitioner. It is also true that the petitioner failed to file the written statement within the stipulated period of 30 days which expired on 02.03.2023. However, the petitioner filed the written statement on 23.05.2023. It is not disputed that the petitioner had also filed an application for seeking condonation of delay in filing written statement by submitting that he forgot the next date of hearing and thus he could not appear on the said date of hearing.

24. Needless to say, the petitioner should have been responsible and diligent for noting the date of his appearance in the court. Had he done so, he would have filed the written statement within the prescribed period of 30 days from the date of service. It appears that the petitioner had acted in a negligent manner by not noting the date as well as the directions of the court on the summons. However, the written statement has been filed within 120 days of the service. The learned co-ordinate bench of this Court in **SM**



Motorenteile GMBH vs A.A. Automobiles & Ors. CS(COMM) 553/2019
had condoned the delay in filing the written statement in the commercial suit as the same was filed within the delay condonable time period of 120 days under Order VIII Rule 1 of CPC as amended by the Commercial Courts Act, 2015.

25. Accordingly, the delay of 81 days in filing the written statement is hereby condoned, the written statement to form part of the record before the learned Commercial Court, subject to cost of Rs 25,000 to be paid to the respondent. The impugned order is set aside.

26. The petition, along with pending applications, if any, stands allowed.

SHALINDER KAUR, J.

MAY 20, 2024

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