



2024 : DHC : 1935



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

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Judgment reserved on: January 11, 2024
Judgment pronounced on: March 11, 2024

+ CM(M) 1342/2023, CM APPL. 42865/2023 (Interim order) &
CM APPL. 60047/2023 (Early hearing)

NITIN KATARIA

..... Petitioner

Through: Mr. Brijinder Singh Dhull, Advocate.

versus

VARUN JAIN

..... Respondent

Through: Mr. Harshbir Singh Kohli and Mr.
Munish Vohra, Advocates.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The Petitioner herein is seeking to impugn the orders dated 09.11.2022 and 25.03.2023 passed by the learned District Judge (Commercial Court), North District, Rohini, Delhi ("Trial Court") in CS(COMM) No. 125/2022 titled as "*Varun Jain vs. Nitin Kataria*" whereby the Learned Trial Court dismissed the application filed by the Petitioner herein seeking review of the order dated 09.11.2022 vide which his defence was struck off. Aggrieved by the aforesaid position, the petitioner has preferred the present petition under Article 227 of the Constitution of India.
2. The Petitioner is the defendant and the Respondent is Plaintiff in the commercial suit, which is pending adjudication before the Learned Trial Court.



3. The limited issue that arises before this court is whether the Learned Trial Court was correct in striking off the defence in view of the entire facts and circumstances of the case.

4. Shorn of superfluities, the facts necessary for the adjudication of the present matter are that the Petitioner herein is the son/legal heir of Late Shri Jai Prakash Kataria who was the proprietor of M/s Kataria Trading Company (Later renamed to M/s Nikunj Sales) who transacted with the Respondent's firm namely M/s Shri Mahavir Enterprises dealing in the business of the electrical goods, to procure certain electronic goods. However, as per the respondent herein, there was a default of payment to the tune of Rs. Rs. 3,38,370, on the part of petitioner, leading to a legal notice being sent by the Respondent vide letter dated 05.11.2020 addressed to the Late father of the petitioner. Thereafter, notably, Respondent sent another legal notice vide letter dated 03.02.2022 addressed to the Petitioner being the legal representative of late Sh. Jai Prakash Katari. Consequently, on 09.03.2022 the Respondent filed a suit for recovery of Rs. 3,38,370/- against the Petitioner.

5. The suit was listed for 10.03.2022 however notice was not issued as the physical file was not submitted by the Respondent before the Learned Trial Court and thus the case was adjourned for 31.03.2022. On the said date of hearing, the learned Presiding Officer was on leave and the matter was adjourned for 10.05.2022. On 10.05.2022, the Respondent was directed to file statement of truth within 15 days since the same was not filed as per the Commercial Courts Act, the learned Trial Court noted that only thereafter the summons for settlement of issues to the petitioner herein will be issued. The matter was posted for 09.11.2022.



6. In the meanwhile, the petitioner received the summons for settlement of issue on 03.06.2022 and the Petitioner filed his written statement on 18.07.2022 along with relevant documents stating that both the firms are different and the petitioner herein has no liabilities against the respondent as such and the case is likely to be succeeded in favour of the petitioner. It is also contended by the Petitioner that all the legal heirs of Late Sh. Jai Prakash Katari are not impleaded hence the suit is not maintainable before the Learned Trial Court.

7. The entire controversy arose in the present case, when on 09.11.2022, petitioner appeared for the first time before the learned Trial Court, however, the written statement already filed by him on 18.07.2022 was not taken on record. Thereafter, petitioner had filed a review petition before the learned trial court seeking review of the order dated 09.11.2022, which came to be dismissed by the learned trial court on 25.05.2023. Thus, aggrieved by the aforesaid orders, the petitioner has preferred the present petition.

Submissions of parties

8. Assailing the impugned order, the learned counsel for the petitioner submitted that on 09.11.2022, the proxy counsel for the Petitioner appeared and supplied the copy of the written statement to the counsel for the Respondent. However, no order was passed in the presence of the counsel, whereas as per the order, the case was called up on 09.11.2022 and the Learned Trial Court directed issuance of fresh summons to the petitioner herein and the matter was listed for 27.03.2023, the order which was apprised of by petitioner only later upon downloading the same. However, another order dated 09.11.2022 was passed whereby the learned trial court



struck of the defence of the petitioner herein and the order directing issuance of fresh summons was realized to be an incorrect one.

9. The learned counsel further submitted that the learned Trial Court gravely erred in passing the impugned order without realising that it had uploaded a wrong order on the E-Court App and because of the said misinformation the counsel for the petitioner could not file an application under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred as 'CPC') for condonation of delay of around 15 days in filing the written statement. Had the said wrong order not been uploaded because of which the petitioner was under an impression that summons have been again issued to him. Thus, he did not take appropriate steps to seek condonation of delay in filing the written statement.

10. Learned counsel submitted that learned Trial Court committed an error by relying upon a judgment of this Court in *M/s Ok Play India Pvt. Ltd. V. M/s AP Distributors & Anr. (supra)* which has been set-aside by the Hon'ble Supreme Court in the case titled as *M/s AP Distributors & Anr V. Ok Play India Pvt. Ltd.*, 2022 SCC Online SC 1512. Therefore, in these circumstances, the petitioner cannot be penalised by making him lose his right to file written statement and the impugned order deserves to be set aside.

11. Strongly refuting the submissions, learned counsel for the respondent submitted that the reasons given by the petitioner in not filing the written statement as per law, are untenable as the order dated 09.11.2022 was passed in the presence of one Sh. Sachin Bansal, Proxy Counsel appearing on behalf of the petitioner. Supposing, a wrong order dated 09.11.2022 was uploaded, the bare perusal of the said order would reveal that the same does



not pertain to the present case. Even if there was some confusion, the petitioner was expected to inspect the Court record, but no such effort was made and the petitioner is using uploading of a wrong order as a shield to save the written statement filed by him beyond the stipulated period which cannot be permitted in law.

12. It is further the contention of the respondent that the petitioner failed to file the written statement within 30 days as per his own admission which was filed only on 18.07.2022, the same was neither accompanied with the statement of truth nor with the affidavit of admission/ denial of documents as required under the Act and as such non-filing of the said documents is *non-est* and defective. Moreover, no application for condonation of delay was filed justifying the reasons for filing the written statement beyond 30 days.

13. The learned counsel submitted that in the absence of sufficient cause to be declared by the petitioner which prevented him from filing the written statement within the stipulated time frame, the same has been rightly taken off the record by the learned Trial Court. Reliance has been placed on the judgment in the case of *M/s Vidhi Electrical & Eng Co v. C & S Electrical Ltd.*, 2022 SCC OnLine Del 1429, further reliance has also been placed on *Padma Sundara Rao & Ors. V. State of Tamil Nadu & Ors.*, 2002 (3) SCC 533.

14. The learned counsel further submitted that the review application filed by the petitioner before the learned Trial Court was time barred as it was filed 30 days after the passing of the impugned order.

15. To conclude the arguments, the learned counsel for the respondent submitted that the filing of the review application was not maintainable in



the present case as the review can be entertained when there is some material error manifest on the face of the earlier order realising any miscarriage of justice. Review operates in limited arena when some inadvertent mistake is committed by the Court in ignorance and same can be rectified. Whereas, in the present case, there is no error apparent on record and it was the fault attributable to petitioner who was trying to ignore it by making frivolous excuses. Reliance placed on the judgment passed in the case of ***Rajender Kumar & Ors. V. Rambhai & Ors.*** AIR 2003 SC 2095.

Analysis & Conclusion

16. Submissions heard, record perused along with the impugned order. It is relevant to note the provision under the Order VIII Rule 1 of the Code of Civil Procedure, 1908, which provides for 30 days from the date of service of summons as the time within which written statement may be filed in response to the suit. The proviso to Order VIII Rule 1 of the Code of Civil Procedure, 1908 as substituted by the Commercial Courts Act 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 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.”

17. It is also pertinent to note that a new 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.”

18. From the reading of the aforesaid provision, it is manifest that while the normal period for filing the written statement in response to a suit would expire 30 days from the date of service of the 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. Necessarily, the reasons explained by the defendant by seeking condonation of delay should be such that the Court is satisfied that there is a sufficient reason with the defendant for not filing the written statement within 30 days. However, in commercial suits, no power vests in the Court to condone the delay beyond 120 days.

19. It is also well settled that the courts are bound to follow the timeframe defined for the purpose of limitation which is not subjected to any exception. The courts cannot extend in any manner the time frame no matter whether there is genuineness in the reasons for such a delay. To curb the prolonged delays in the lis, comprehensive amendments were introduced in the Code of Civil Procedure, 1908 in view of long periods being taken up for completion of pleadings in a case, such as by modifying the maximum period for filing the written statement to 120 days.



20. In the present case, the written statement though filed belatedly by the petitioner on 18.07.2022, however the other relevant documents i.e. statement of truth and admission/denial were not filed along with it. Order VI Rule 15(A) of the CPC as amended under Commercial Courts Act requires that pleadings are to be supported by a duly attested affidavit by way of verification failing which the said pleadings shall not be permitted to be read as evidence of any fact set out in the petition.

21. Evidently, the affidavit by way of statement of truth is required to be filed along with the petition and the written statement as per the mandate of the Act.

22. It is relevant to note the Order VI Rule 15A of the Code of Civil Procedure, 1908 which reads as under:

“[15A. Verification of pleadings in a commercial dispute.— (1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule. (2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties. (3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise. (4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein. (5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.]”

23. Further, Order XI Rule 7, 8 & 9 of the CPC reads as under:



“(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including—

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant’s defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only—

(i) for the cross-examination of the plaintiff’s witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.”

24. The position of law with respect to the Order VIII Rule 1 of the CPC has now been settled that the consequences of non-filing of written



statement, the amended provision of Code of Civil Procedure, 1908 will have to be held to be mandatory. [*SCG Contracts (India) Private Limited v. K. S. Chamankar Infrastructure Private Limited and Others*, (2019) 12 SCC 210]

25. Reverting back to the facts of the present case, it is not disputed that the written statement was not filed by the petitioner within 30 days of the date of service; it was not accompanied by Statement of Truth and affidavit of admission/denial of documents. Importantly, no application for condonation of delay had been filed along with the written statement. To come out of the rigours of the Proviso to Order VIII Rule 1 of the CPC, the petitioner has tried to take protection of a wrong order dated 09.11.2022, which was uploaded on the website of the Court.

26. Be it noted, it is an admitted position that on 09.11.2022, proxy counsel on behalf of the petitioner appeared and handed over copy of written statement to the respondent. The argument raised on behalf of petitioner is not impressive that order regarding not accepting the written statement on record was not passed in his presence. It is quite impossible that the proxy counsel for the petitioner after passing on the copy of written statement to the opposite side would have left the court proceedings abruptly without any genuine reason and even without noting the next date of hearing. In the order dated 09.11.2022, the learned Trial Court records that as per report of the process server, the petitioner was served on 03.06.2022 and he filed the written statement on 18.07.2022. It is further observed that written statement has been filed after the expiry of 30 days from the date of service and same was neither accompanied by any application for condonation of delay nor by statement of truth and affidavit



of admission/ denial of documents as required under the Commercial Courts Act, therefore, the same could not be taken on record.

27. While passing the said order, the learned Trial Court had relied upon the judgment passed by this Court in the case of *M/s Ok Play India Pvt. Ltd. v. M/s AP Distributors & Ac.(Supra)*. Needless to say that the said order has been set aside by the Hon'ble Supreme Court in *M/s AP Distributors (Supra)*. The learned counsel for the respondent has contended that on facts, the said case does not support the petitioner since, in the said case, the application seeking condonation of delay was filed though belatedly on behalf of the party which is not so the case in the present facts. Moreso, the mandatory requirement as per Order VI Rule 15A of the CPC for filing statement of truth and admission/denial of documents are also missing.

28. In the present case, no application for condonation of delay has been filed till date before the learned Trial Court or even before this Court, however, petitioner has made a bald statement in the application for stay and that too not in the petition before this Court that the application for condonation of delay is annexed as Annexure-3, however, no such application has been filed on record. Therefore, no plausible reason has come on record for not filing of the written statement within stipulated period of days. Petitioner has indulged in submitting that a wrong order dated 09.11.2022 was passed because of which, he was misled and could not file an appropriate application to state reasons for delay.

29. It is relevant to mention that the learned Trial Court has further observed that while the order was passed in presence of the proxy counsel of the petitioner, he did not seek time for rectification of the defects or for



filing of any appropriate application in this regard. Therefore, in said circumstances, and rightly so, the learned Trial Court concluded that the contention raised on behalf of the petitioner herein that he was misled by uploading of a totally different order dated 09.11.2022 on the website of the District Court is of no help to him. At this stage, it is relevant to mention the wrongly uploaded order dated 09.11.2022 which reads as under:

*“The plaintiff has not filed fresh address of the defendant. Ld. Counsel submits that the defendant is still doing business at the given address but is deliberately avoiding service of summons. Accordingly, let fresh summons be Issued to the defendant through all permissible modes on filing of PF within one week from today.
Summons be given dasti also as prayed.”*

30. Pertinently, after passing of adverse order against the petitioner in the presence of a proxy counsel of petitioner, in case, petitioner came across the some other order of the even date posted on the website which was totally contrary to the order passed in his presence, the petitioner should have been cautious to inspect the Court records or to move an appropriate application before the learned Trial Court to seek a clarifications of the same. No such steps have been taken by the petitioner.

31. The petitioner has failed to show any reason for not doing so which apparently establishes that he was not diligent and careful about completing the pleadings within stipulated time frame as provided by the Commercial Courts Act and moreso, the adverse order on 09.11.2022 was passed in the presence of his proxy counsel by the learned Trial Court.

32. In the case of ***Vidhi Electrical and Engineering Company v. C. S. Electric Ltd. and Another***, the learned Division Bench of this Court



clarified the issue regarding not filing of written statement within 30 days and the consequence thereafter and held as under:

“Furthermore, a Division Bench of this court by order dated 14.07.2021 in Sunil Sahoo v. Anoop Kumar Jain in FAO (Comm) 110/2021, wherein admittedly WS was not filed within 30 days period from the date of receipt of summons and the appellant did not file any application before the learned Trial Court seeking extension of time for filing the WS, much less show any cause for seeking such extension or for the inability to file the WS within the prescribed time. It was held that the learned Trial Court was correct in closing the right of the appellant to file the WS. The present case is identical.

7. Insofar as the statute requires the filing of WS within 30 days and in justifiable cases grant of extension beyond 30 days up to 120 days, it would be necessary that the application seeking condonation of delay be filed along with WS to explain and put before the court the contrants in filing the WS within time. Only in justifiable cases would the delay be condoned. Such application has not been filed till date. In the absence of an application before the learned Single Judge, no relief could possibly have been granted to the appellant. It is noted that the WS is still lying under objections.”

33. In view of the above, the impugned orders do not suffer from any illegality and thus, requires no interference by this Court. Consequently, the present petition, along with pending applications, is dismissed.

SHALINDER KAUR, J.

MARCH 11, 2024/aks