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

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Date of decision: February 06, 2024

+ CM(M) 1447/2023, CM APPL. 46222/2023, 46224/2023, 1357/2024

PACKIT SOLUTIONS & ANR Petitioners

Through: Mr. Ujjwal and Mr. Parvinder,
Advocates.

versus

GREY ORANGE INDIA PVT. LTD. Respondent

Through: Mr. Mayank Pandey, Advocate.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T (oral)

1. The present petition under Article 227 of the Constitution of India has been filed assailing the order dated 14.08.2023 passed by the Learned District Judge, Central District, Tis Hazari West, Delhi ("Trial Court") in CS (COMM) No. 430/2020 titled as "Grey Orange India Pvt. Ltd. vs. Packit Solutions & Anr" whereby the learned Trial Court has allowed the application under Order V read with Order VIII Rule 1 and 10 of the Civil Procedure Code, 1908 (hereinafter referred to as "CPC") filed by the respondent and taken off the record the written statement dated 22.03.2023 filed by the petitioners on 07.04.2022.

2. The respondent herein is the plaintiff and the petitioners herein are the defendants before the learned Trial Court.

3. For disposal of the present petition, the facts of the case are that the



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suit under order XXXVII CPC bearing CS (COMM) No. 430/2020 was filed on 23.12.2020. Upon the institution of the suit, the learned Trial Court proceeded to issue summons for 25.01.2021 vide its order dated 23.12.2020. On the said date of hearing, the learned counsel for the respondent herein filed an application under Order XXXIX Rule 1 & 2 seeking ad-interim injunction before the Trial Court.

4. Thereafter, the matter was listed for arguments on the said application on 05.03.2021. However, on the said date of hearing, the learned counsel for the petitioner no.1 proceeded to file an application under Order XIII Rule 1 read with Order XI Rule 14 of the CPC, whereby they sought the production of documents. The foundation of this application was based on the purchase order relied upon being a false and a fabricated document. Subsequent thereto, the matter was posted for arguments on both the applications and upon hearing the arguments, the learned Trial Court vide orders dated 27.03.2021 dismissed the application under Order XXXIX Rule 1 & 2 filed by the respondent.

5. The said matter was adjourned on various occasions owing to COVID-19 pandemic, however it was finally heard on 25.10.2021 whereby learned trial court observed that on 23.12.2020, the suit was erroneously treated as one under Order XXXVII CPC and that the summons issued were to be treated as ordinary summons. Vide the said order, the counsel for the petitioner no. 1 was required to file written statement within 20 days. The matter was then put up for filing of written statement on 21.12.2021.

6. The petitioner no. 1 failed to file the written statement along with the statement of truth & affidavit of admission and denial within the stipulated



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time period and the same was filed on 07.04.2022

7. Vide the impugned order it was held by learned Trial Court that the arguments of the learned counsel for the petitioner no. 1 had no merits as the predecessor court had dismissed the application under Order XIII Rule 1 read with Order XI Rule 14 of the CPC vide its order dated 21.03.2022 and that this order was not challenged by the defendants therein. Thereafter, the application under Order V read with Order VIII Rule 1 and 10 seeking forfeiture of the defendant's right to file a written statement was allowed.

8. It is the contention of the petitioners that the learned trial court erred in taking off the record the written statement without considering the fact that it was well within the limitation as provided by the Hon'ble Supreme Court in *Suo Moto Writ Petition(C) No. 3 of 2020 In Re: Cognizance for Extension of Limitation*. Vide this extension; the period of limitation for the petitioners would have expired on 30.05.2022 therefore the written statement was filed within the time period provided. The petitioner states by way of "Operation of Law" they are entitled to the said relaxation and had about 90 days due to the same to complete pleadings.

9. The petitioners submit that the above-mentioned "Operation of Law" for exclusion of time from 15.03.2020 to 28.02.2022 in calculating limitation for filing written statement where the defendants had been appearing has been allowed in various judgements of the Hon'ble Supreme Court and various High Courts across India. The petitioner places reliance on "**Prakash Corporates Vs Dee Vee Projects Limited**"(2022) 5 SCC 112, "**Babasaheb Raosaheb Kobarne & Anr Vs Pyrotek India Pvt Ltd & Ors**" and "**Aditya Khaitan & Ors Vs II and FS Financial Services**



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Limited". The petitioner has also placed reliance on judgements of this Court titled as **"Choice Hotels International, Inc Vs Oravel Stays Pvt Ltd & Ors"** 2022 SCC OnLine Del 195 and **"Hemant Verma Vs. Diana Techno Solutions Pvt Ltd"** in CM(M) 711/2022.

10. The petitioners also submit that appearances by the defendant before the Trial Court is not a ground to not grant exclusion of time. To this effect, the petitioner seeks to place reliance on **Prakash Corporates Vs Dee Vee Projects Limited** (2022) 5 SCC 112, as **"Choice Hotels International, Inc Vs Oravel Stays Pvt Ltd & Ors"** 2022 SCC OnLine Del 195 and **"Hemant Verma Vs. Diana Techno Solutions Pvt Ltd"** in CM(M) 711/2022. The petitioner also states that the respondent was also exercising exemptions before the learned Trial Court on account of COVID till April, 2022.

11. The petitioners bring to the notice of the Court the fact that the application under Order V read with Order VIII Rule 1 and 10 for foreclosing the petitioner's right to file a written statement was filed four months after the filing of the written statement and application under Order VII Rule 11 application under Order VII Rule 11 filed on 22.03.2022 warranted a disposal prior to the disposal of the application under Order V read with Order VIII Rule 1 and 10 dated 22.08.2022. Reliance is placed on **"Gangappa Gurupaddapa Gugwad, Gulbara Vs Rachawwa, widow of Lochanappa Gugwad & Ors"** (1970) 3 SCC 716.

12. To conclude, the petitioners submit that the delay cannot be attributed to the petitioners as the respondent agitated the suit to be a Suit under Order XXXVII of the CPC, until its nature was modified vide Order dated 25.10.2021 wherein the nature of the suit was changed from Summary



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Suit under Order XXXVII of the CPC to the Simple suit of recovery. Till 25.10.2021 and until earlier dismissal of his application under Order XXXIX Rule 1 and 2 of the CPC, respondent was trying its luck for a summary judgment in the suit, which was defended by the petitioners. The respondent deliberately delayed the filing of the reply to the Application under Order XIII read with Order X1 of the CPC dated 16.03.2021 filed by the petitioners by more than 2 years and has in-fact vide its reply to the said application has sought to bring on record a new purchase order along with its reply dated 06.03.2022 and the purchase order which is the only basis of filing the present suit has not been brought on record in original, till date.

13. Cumulatively, the entire facts of circumstances of the case warrant for setting aside of the impugned order.

14. The respondent, conversely, contends that the petitioners are merely using delay tactics by not filing the written statement within the stipulated time period and thereby delaying the outcome of the suit before the learned Trial Court. The respondent submits that on perusal of the Trial Court record as well as the impugned order, it is evident that the petitioners have filed multiple applications to delay the proceedings in the suit. The application preferred to clarify the order dated 25.10.2021, whereby it was clarified that the suit is not a summary suit but a simple suit for recovery, makes it evident that the petitioner are merely prolonging the proceedings.

15. The respondent submits that the facts of *Suo Moto Writ Petition(C) No. 3 of 2020 In Re: Cognizance for Extension of Limitation* and that of “*Prakash Corporates Vs Dee Vee Projects Limited*”(2022) 5 SCC 112, are not applicable to the present case. While placing reliance on the



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judgement titled as **“Brainlink Intl. Inc. & Anr. v. HT Media Ltd. & Anr”** SLP(C) No.3579/2022, it was submitted that the Hon’ble Supreme Court has clarified that the orders passed extending limitation in *Suo Motu W.P. (C) 3 / 2020* could not be taken as benefit of by a party if its conduct disentitled it and further if the party had even during the pandemic participated in the proceedings. It was submitted that the petitioners herein had waived of the right to seek benefit granted under by the Hon’ble Supreme Court in *Suo Moto Writ Petition(C) No. 3 of 2020 In Re: Cognizance for Extension of Limitation* by not raising the same before the learned Trial Court.

16. Further, the petitioner’s failure to seek condonation of delay in filing the written statement on the basis of orders passed in *Suo Moto Writ Petition(C) No. 3 of 2020* including in response to the application filed by the respondent seeking forfeiture of the petitioners right to file a written statement before the learned Trial Court constitutes waiver. The respondent states that the petitioners ought not to be allowed to raise new pleas at this stage, as the option to do the same was available to the petitioners earlier. To this effect, the respondent places reliance on the Hon’ble Supreme Court in **“Manak Lal Vs Prem Chand”** AIR 1957 SCC 425.

17. To conclude, the respondent submits that the petitioners was actively participating in proceedings and never took the plea of the prevailing COVID pandemic. The petitioners took its belated plea once the impugned order was passed, a right that the petitioners have waived earlier itself. Therefore, the respondent prays that present petition be dismissed with costs as it has caused prejudice to the respondent. In the event, that the present



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petition is allowed, the same should be done while imposing exemplary costs on the petitioner.

18. It is relevant to mention the observations made by the learned Trial Court in the impugned order dated 14.08.2023 which are as under:

“Perusal of proceeding sheets shows that the present suit under Order XXXVII CPC was filed on 23.12.2020 and Learned Predecessor of this Court vide order dated 23.12.2020 issued summons to defendant through email/whatsapp for 25.1.2021. On 25.1.2021 none appeared for defendants whereas learned counsel for plaintiff filed an application under Order 39 Rule 1 & 2 CPC for ad interim injunction. Matter was then listed for arguments on application on 5.2.2021. On 5.2.2021, Sh. Ujjwal Jain, learned counsel for defendants appeared. Thereafter, vide order dated 15.2.2021, matter was listed for reply and arguments on application Under Order 39 Rule 1 & 2 CPC for 5.3.2021. On 5.3.2021, learned counsel for defendants filed application under Order 13 Rule 1 r/w Order 11 Rule 14 CPC. Thereafter matter was listed for disposal of both applications for 8.3.2021. On 8.3.2021, learned Predecessor of this Court heard arguments on both applications and listed the matter for orders on both applications for 16.3.2021. On 16.3.2021, matter was renotified for orders on 27.3.2021. Vide order dated 27.3.2021, passed by Learned Predecessor of this Court, application under Order 39 Rule 1 & 2 CPC was dismissed.

Thereafter matter was listed for argument on pending applications for 13.5.2021. Thereafter matter was taken up on 26.8.2021 on account of Second Wave of Covid-19 and was renotified for reply/arguments on application under Order XIII Rule 1 r/w Order 11 Rule 14 CPC.

Subsequent thereto, vide order dated 25.10.2021 which was passed in presence of learned counsels for both parties viz., Sh. Mayank Pandey, counsel for plaintiff and Sh. Ujjwal Jain, counsel for defendants, learned Predecessor ordered as under:



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The present suit is a simple suit for recovery and an application under Order XXXIX Rule 1 & 2 CPC was moved alongwith the suit. The ordersheet dated 23.12.2020 finds of suit under Order 37 CPC, whereas this is not a suit under Order XXXVII CPC. Accordingly the error erupted in the ordersheet dated 23.12.2020 is corrected. The summons issued be treated as ordinary summons.

Written statement be filed within 20 days with advance copy to the counsel for plaintiff.

Put up for filing written statement on 21.12.2021."

However, despite specific direction written statement was not filed within 20 days. Instead same was filed on 7.4.2022.

19. In the case put forth, multiple factors have attributed to the delay in filing the written statement. The peculiar facts of the present suit are that the present suit was instituted as a summary suit under Order XXXVII CPC on 23.12.2020. The learned Trial Court ultimately clarified vide order dated 25.10.2021 that it was an ordinary suit. The said clarification has been made on the basis of the application filed on 27.03.2021 by the respondent/plaintiff.

20. The Petitioners are thus justified in not filing the written statement till the correct nature of suit was established and the effective time for filing the written statement started with effect from 25.10.2021.

21. It is not disputed that the petitioners had moved an application under Order XIII Rule 1 read with Order XI Rule 14 CPC on 15.03.2020, seeking directions that the respondent be directed to file all emails and attachments forming part of the plaint as well as the paper book and list of documents



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which have been referred in the plaint, which came to be dismissed by the learned Trial Court on 21.03.2022 stating that the application was vague in nature.

22. Furthermore, the reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in "***Suo Moto Writ Petition(C) No. 3 of 2020 In Re: Cognizance for Extension of Limitation.***" Vide the said order the period of limitation during COVID-19 was to be excluded from 15.03.2020 to 28.02.2022.

23. As such, while the normal period for filing a written statement in answer to the commercial suit would expire 30 days 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 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.

24. In the present case, the petitioners were to be served with summons vide the order dated 23.12.2020 which were returned after service on 19.01.2021. The written statement was filed on 07.04.2022 i.e. on the 37th day, keeping in view the order passed by the learned Trial Court on 25.10.2021 and the extension of limitation period w.e.f. 15.03.2020 to 28.02.2022 as allowed by the Hon'ble Supreme Court in "***Suo Moto Writ***"



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Petition(C) No. 3 of 2020 In Re: Cognizance for Extension of Limitation.

The petitioners to explain the delay further have submitted that they had moved an application under Order XIII Rule 1 read with Order XI Rule 14 CPC whereby they were seeking directions for the respondent to file more documents including the paper book, however, the said application came to be dismissed on 15.03.2021 which fact is undisputed. Moreso, the respondent had contended that in case the petition is to be allowed, same should be done by imposing exemplary cost on the petitioners.

25. Having considered the above submissions, peculiar facts and circumstances of present case, the order of the learned Trial Court dated 22.03.2023 as well as the impugned order are consequently set aside. The learned Trial Court to take the written statement on record as per law, subject to cost of Rs. 25,000/- to be paid before the learned Trial Court on the next date of hearing to the respondent.

26. With above submissions, the petition along with pending applications stands disposed of.

SHALINDER KAUR, J.

FEBRUARY 06, 2024

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