



\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(COMM) 202/2023 CM APPL. 47290/2023**

M/S OJAS NATURALS APPELLANT
Through: Counsel (appearance not given)

versus

M/S SHRI SALASAR TRADERS RESPONDENT
Through: Mr. Munish Vohra, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER
27.03.2024

%

1. The appellant has filed the present appeal impugning the judgement dated 23.03.2023 (hereafter *the impugned judgment*) passed by the learned Commercial Court in CS(Comm.) 440/2020 captioned *M/s Shri Salasar Traders v. M/s Ojas Naturals*. In terms of the impugned judgement, the learned Commercial Court had decreed a sum of Rs.6,57,695/- along with *pendente lite* and future interest at the rate of 9% per annum in favour of the respondent. In addition, the learned Commercial Court had also awarded costs in favour of the respondent (the plaintiff in the suit).
2. The respondent had filed the said suit to recover a sum of Rs.6,57,695/- along with interest from the appellant.
3. It is the respondent's case that he supplied material to the appellant from time to time. The appellant had discharged the consideration in part, however, a sum of Rs.6,57,695/- remained due and outstanding.



4. The appellant had filed a written statement. However, the same was not taken on record on the ground that it was filed beyond the prescribed period of 120 days and, therefore, was barred by limitation.

5. The appellant has challenged the impugned judgment on the sole ground that the impugned judgement has been passed without considering the written statement which, according to the appellant, was filed within the period of limitation.

6. The respondent has filed the suit on 14.12.2020 and summons were issued to the appellant. There is no dispute that the summons was duly served to the appellant on 16.12.2021. The appellant appeared before the learned Commercial Court on 05.03.2021 and undertook to file a written statement within a period of 15 days from the said date. However, the written statement was not filed within the said period as undertaken by the appellant; it was filed on 10.05.2022. Accordingly, the learned Commercial Court struck off the defence of the appellant (defendant in the suit) by an order dated 10.05.2022 and listed the matter for plaintiff's evidence on 12.07.2022.

7. The learned Commercial Court did not consider the import of the orders passed by the Supreme Court in ***In Re: Cognizance for Extension of Limitation***, Suo Moto W.P. (C) No.03/2020. In the said matter, the Supreme Court, by an order dated 10.01.2022, had issued pre-emptory directions, *inter alia*, to the effect that in case where the limitation had expired during the period 15.03.2020 to 28.02.2022, a period of ninety days from 01.03.2022 will be available to all persons to file suits, appeals, applications, or proceedings. As noted above, the appellant had filed his written statement on 10.05.2022 which was within ninety days from 01.03.2022.



Accordingly, the written statement was filed within the period of limitation as extended by the Supreme Court by virtue of orders passed in *Suo Moto* W.P.(C) No.03/2020.

8. In view of the above, the impugned judgement cannot be sustained as it was passed without considering the written statement of the appellant. We, accordingly, set aside the impugned judgement and remand the matter to the learned Commercial Court for decision afresh in accordance with law.

9. It is clarified that all rights and contentions of the parties are reserved. Nothing stated in this order shall be construed as an opinion on the merits on the respondent's claim in the suit.

10. The amount deposited by the appellant with the registry of this Court will abide by the order that will be passed by the learned Commercial Court.

11. The appeal stands disposed of along with the pending application.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 27, 2024

dr

Click here to check corrigendum, if anyw