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

% ***Date of decision: 16th July, 2024***

\+ **CM(M) 2924/2024 & CM APPL. 39353/2024 & CM APPL. 39352/2024 (stay)**

HINDUSTAN STEEL WORKS CONSTRUCTION LIMITED

.....Petitioner

Through: Mr. Nalin L Sahay with Mr. Ahmad Shahrooz and Mr. Rakshan Ahmed, Advocates.

versus

VKS INFRATECH MANAGEMENT PVT LTD .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT *(oral)*

1. Petitioner is defendant before the learned Trial Court and is defending a suit which is commercial in nature.

2. The challenge in the present petition is with respect to order dated 23.04.2024 whereby the application moved by the defendant (petitioner herein) has been dismissed and its written statement has been directed to be taken off the record.

3. The fact lies in a very narrow compass.

4. Admittedly, the defendant was served on 01.09.2023 through electronic mode. Along with such summons sent through electronic mode, a soft copy of the petition was also sent to the defendant.

5. However, when the counsel for defendant appeared before the learned Trial Court on 19.10.2023, a hard copy set was also provided to him. The

learned Trial Court also recorded in its order dated 19.10.2023 that the hard copy of the plaint and documents were being supplied, though, the soft copy thereof had already been supplied to him.

6. Surprisingly, on 19.10.2023, the counsel for defendant submitted that he would file written statement within a period of 120 days with an application seeking condonation of delay. However, there was no observation of the learned Trial Court, either way, with respect to such submission.

7. The written statement was eventually filed on 22.01.2024 through electronic mode.

8. The period of 120 days is, admittedly, to be reckoned from the date of service or at best from the date when the complete set of plaint and documents was supplied to the defendant, to enable him to file written statement.

9. It is claimed by Mr. Sahay, learned counsel for the petitioner that some of the pages of the soft copy were not legible and, therefore, the time should not be reckoned from 01.09.2023. Rather, it should run from 19.10.2023 when hard copy set was provided.

10. Such, assertion has no merit. It is noticed that the defendant had never raised any grievance before the learned Trial Court, at any point of time, that the soft copy provided to him was not fully legible. It was only by way of caution that he was supplied with a hard copy set on 19.10.2023. Merely, because another set was given to him on 19.10.2023, it would not mean that the time would start to run from 19.10.2023 onwards.

11. Moreover, during course of the arguments, a specific question was put

to Mr. Sahay and he was unable to pin point as to which particular page or pages were illegible when the copy of the plaint and documents was supplied through electronic mode. The petitioner should have also attached such soft copy so as to corroborate its version. It was not contemplated to be filed either before the learned Trial Court or this Court.

12. The law in this regards is very clear and settled.

13. In *SCG Contracts (India) Private Limited vs. KS Chamankar Infrastructure Private Limited,* (2019) 12 SCC 2010, the Hon'ble Supreme Court has, in no uncertain terms, laid down that the provision regarding filing of written statement in a commercial suit is absolute in nature and such period can neither be extended nor be permitted to be circumvented.

14. The aforesaid judgment was considered in *Prakash Corporates vs. Dee Vee Projects Limited* (2022) 5 SCC 112 wherein also it is held that the principle regarding timeline of mandatory period of 120 days is mandatory and binding, with little, or rather, no discretion with the adjudicating authority for enlargement of such period. The only relaxation given was because of Covid-19 pandemic, which was treated to be an *'extraordinary situation/circumstance'.* Here, unfortunately, no such extraordinary circumstance exists.

15. Moreover, this Court has already observed in *North Eastern Carrying Corporation Ltd. vs. Do Best Infoway* 2024:DHC:4945 that if proper interpretation is given to the statutory provision contained under Order VIII Rule1, any defendant cannot claim period of 120 days as matter of right. The initial period is 30 days from date of service and it is only when he fails to do

so, the court may allow him further period of 90 days, for reasons to be recorded in writing. Thus, the court can even decline such further enlargement of 90 days, in case no justifiable reason exists.

16. This Court cannot also be oblivious of the fact that the scope of judicial review in the present petition filed under Article 227 of the Constitution of India is very limited. This provision is meant for superintendence and the court is only required to examine whether the authority which has passed the impugned order has, in doing so, exposed itself to supervisory correction or not. In view of the factual position discussed above and the settled legal position, there is no irregularity or jurisdictional error of any kind in the impugned order.

17. In view of the aforesaid, I do not find any merit or substance in the present petition. The same is dismissed.

(MANOJ JAIN)
JUDGE

JULY 16, 2024/*sw*