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

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Decision delivered on: 15.01.2024+ **FAO (COMM) 225/2023**

HARDEV KAUR JANDO & ANR. Appellants
Through: Mr Tushar Singh, Adv.

versus

M/S UPPER LAND CONSTRUCTIONS
PRIVATE LIMITED & ORS. Respondents
Through: Mr Avneesh Garg, Adv. for R-1 to 3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. At the outset, we may note that the Registry reports that respondents 1 to 3 have not been served and that service report *qua* respondent nos. 4 to 6 is awaited.
2. Fortuitously, Mr Avneesh Garg has entered appearance on behalf of respondents 1 to 3.
3. Insofar as respondents no. 4 to 6 are concerned, Mr Tushar Singh, Advocate, who appears on behalf of the appellants, says that the said can be dropped from the array of parties.
- 3.1 It is ordered accordingly.
4. The challenge in the appeal is directed *qua* the order, dated 29.08.2023, which is limited to the extent it forecloses the right of the



appellants to file a written statement in the suit action.

4.1 The learned District Judge (Commercial Court) (Digital-04)/South, Saket, New Delhi, based the impugned direction on the fact that 120 days had already passed since the time the appellants/defendants were served with summons in the suit action.

5. It is not disputed that the summons were served on the appellants/defendants on 20.04.2023.

6. Mr Singh contends that since “extraordinary circumstances” obtained in Himachal Pradesh during the relevant period, the learned District Judge was invested with the power to condone the delay beyond 120 days even in commercial suit actions covered under the Commercial Courts Act, 2015 [in short, “2015 Act”].

6.1 In support of his contention, Mr Singh seeks to rely on a judgment rendered by the Supreme Court in *Prakash Corporates v. Dee Vee Projects Ltd.*, (2022) 5 SCC 112.

7. We may note that the “extraordinary circumstances” referred to *Prakash Corporates*, because of which an extension of limitation was granted, veered around the COVID-19 pandemic.

8. In support of his plea, Mr Singh says that the State of Himachal Pradesh was wracked with an unprecedented flood in Himachal Pradesh, hence the situation faced by the appellants would come within the ambit of the expression “extraordinary circumstances”.

8.1 Mr Singh concedes that though appellant no. 1’s power of attorney holder, who is also arrayed as appellant no. 2 in the instant appeal, is a resident of Jalandhar, Punjab. Admittedly, appellant no. 1 is a resident of the United Kingdom.



8.2 The assertion that at the relevant time, appellant no. 2 was located in Himachal Pradesh is backed only by a blood report, dated 24.05.2023, purportedly issued by a laboratory situated in Himachal Pradesh.

8.3 A close perusal of the report would show that the blood report was obtained by appellant no. 2 on his own, without a referral from a medical practitioner.

8.4 The submission that appellant no. 2 was bedridden because of a “slip-and-fall” accident is not supported by a medical certificate. The assertion that appellant no. 2 was unable to move from his location in Himachal Pradesh during the relevant period does not inspire confidence; it borders on a ruse.

9. What is not in dispute is when the written statement was filed, the appellants did not apply for condonation of delay.

10. In support of the stance that “extraordinary circumstances” prevailed in Himachal Pradesh during the relevant period, material has been placed before us which includes a notification concerning the declaration of holiday, on 10.07.2023, issued by the Registrar General, High Court of Himachal Pradesh, and an order dated 15.08.2023 issued by the Office of the District Magistrate, Chamba, directing closure of educational institutions in Chamba district on 16.08.2023 and 17.08.2023.

10.1 We may note that the said material was not made available to the learned District Judge.

11. Mr Singh cannot but accept that 120 days expired on 18.08.2023 and the written statement was sought to be placed before the learned District Judge only on 29.08.2023.

11.1 Furthermore, the material that the appellants seek to place before us is



not even part of the appeal and has been attempted to be placed before the Court, *albeit*, across the bar.

12. There are two documents that Singh has placed before us.

12.1 The first document, as noted above, is an order dated 15.08.2023 issued by the office of the District Magistrate, Chamba, Himachal Pradesh.

12.2 The second document is a notice dated 10.07.2023 issued by the Himachal Pradesh High Court declaring that 10.07.2023 would be a holiday, both for the High Court as well as the District Courts located in the State of Himachal Pradesh.

13. Strictly, we are not required to take cognizance of the documents handed over to us across the bar by Mr Singh. Even if we were to take into account these documents, they concern the state of Himachal Pradesh whereas appellant no. 2, i.e., the power of attorney holder of appellant no. 1 was located in Jalandhar, Punjab.

14. As noted above, the appellants had attempted to place the written statement before the learned District Judge without an application for condonation of delay. There was nothing placed before the learned District Judge that could have him reach a different conclusion. Therefore, the impugned order contains neither a factual or legal error.

15. Undoubtedly, the judgment of the Supreme Court rendered in ***SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd.***, (2019) 12 SCC 210 limits the power of the court to entertain a request for acceptance of the written statement to 120 days. The written statement is required to be filed as per the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 [in short, “CPC”], ordinarily, within 30 days.

15.1 The proviso appended to the said provision makes it abundantly clear



that, *qua* the presentation of the written statement, the defendant would be allowed a leeway of 90 days, the total period being 120 days, that too for reasons to be recorded in writing and on payment of costs deemed fit by the court. Therefore, the play in the joints that the court has, in the given circumstances, is to condone the delay for a further period of 90 days beyond 30 days.

16. The following observations made in the *SCG Contracts (India) (P) Ltd.*, emphasize this aspect quite clearly:

“8. ... A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 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. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.”

[Emphasis is ours]

17. Thus, for the foregoing reasons, we are not inclined to entertain the appeal.

18. The appeal is, accordingly, dismissed.

19. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JANUARY 15, 2024/aj