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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 28.08.2024

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FAO(OS) (COMM) 177/2024**M/S GUPTA BROS (INDIA)****.....Appellant****Through: Mr Irfan Ahmed with Mr Siddharth Singh, Advocates.****versus****GAIL (INDIA) LTD****.....Respondent****Through: Mr N.L. Ganapathi with Ms Rini V. Tigga and Mr Amogh S. Rao, Advocates.****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. On 16.08.2024, we heard the above-captioned appeal at some length. Thereafter, we recorded the broad contours of the case.

1.1 For convenience, the relevant part of the order dated 16.08.2024 is set forth hereafter:

“2.This appeal is directed against the judgment and order dated 11.07.2024, passed by the learned Single Judge.

3. The issue which arises for consideration in the appeal is: whether or not the appellant/plaintiff had effected service on the nominated counsel of the respondent/defendant.

4. The record shows that advance copy of the suit was sent via email



on 06.08.2022.

5. The record also discloses that the Registry had raised objection on two (02) dates i.e., 06.08.2022 and 24.08.2022, calling upon the appellant/plaintiff to effect service on the nominated counsel of the respondent/defendant.

6. Concededly, the matter was listed before concerned Registrar on 25.08.2022, when appearance of one, Ms Shefali Gupta was recorded as representing the respondent/defendant.

7. The counsel for the appellant/plaintiff appears to have conceded that the appearance of Ms Shefali Gupta was wrongly recorded. It appears to be the stand of the appellant/plaintiff that on that day, one, Ms Nazia Parveen, an associate of the nominated counsel of the respondent/defendant i.e., Mr Sanjeev Sagar had entered appearance.

8. It is in these circumstances that the concerned Registrar did away with formal issuance of notice to the respondent/ defendant.

9. According to the respondent/defendant, a hard copy of the case papers was served on Ms Nazia Parveen on 01.09.2022. It appears that the hard copy of the case did not include the order dated 25.08.2022 passed by the concerned Registrar.

10. The record discloses that according to the respondent/defendant, service was affected on it on 14.09.2022.

11. The written statement was filed by the respondent/defendant on 11.01.2023.

12. In the interregnum, i.e., on 08.12.2022, Advocates for the respondent/defendant, namely, Mr N. L. Ganapathi, and Mr Siddhant Garg, had entered appearance and assured the concerned Registrar that steps will be taken to place the written statement on record.

13. Thus, the learned Single Judge noticed that if the time for filing the written statement is said to commence on 14.09.2022, then the written statement, which was filed on 11.01.2023, was within the outer limit i.e., 120 days.

14. The learned Single Judge has condoned the delay in filing the written statement, having regard to the aforementioned peculiar facts and circumstances obtaining in the matter.

15. Since accommodation is sought on behalf of the counsel for the



appellant/plaintiff, list the appeal on 28.08.2024.

16. We may note that the learned counsel who appears on behalf of the respondent/defendant says that the appeal is not maintainable.

17. This aspect will be examined on the next date of hearing.”

2. On 16.08.2024 we could not dispose of the appeal because accommodation was sought by Mr Siddharth Singh, Advocate, who appeared on behalf of Mr Irfan Ahmad, i.e., the counsel-on-record for the appellant.

3. Before we proceed further, we may note that counsel for the respondent, Mr N.L. Ganpati, Advocate, raises a preliminary objection as regards the maintainability of the appeal.

3.1 However, at present, we do not wish to deliberate on the issue concerning maintainability. As per the *proviso* appended to Section 13(1A) of the Commercial Courts Act, 2015 [in short, “2015 Act”], only those orders can be challenged that find a mention in Order XLIII of the Code of Civil Procedure, 1908 [in short “CPC”].

4. The instant order, which was passed on a Chamber Appeal by the learned Single Judge, does not find mention in Order XLIII of CPC.

5. That said, the core issue which arises for consideration is, as noted on 16.08.2024: whether or not the appellant/plaintiff had affected service on the nominated counsel of the respondent/defendant.

5.1 The learned Single Judge, in a detailed discussion as reflected in the impugned judgment, has concluded that the respondent/defendant was served only on 14.09.2022.

6. It is important to bear in mind that the Registry had raised objections on two occasions, i.e., on 06.08.2022 and 24.08.2022 that the



appellant/plaintiff should effect service on the nominated counsel.

7. It is important to note that the suit action came to be listed for the first time before the learned Joint Registrar on 25.08.2022. On that date, issuance of formal summons was dispensed with as, purportedly, the respondent/defendant was represented.

7.1 There is no clarity as regards the identity of the person who attended the hearing on 25.08.2022. According to the respondent/defendant, it was not represented by the associate of the nominated counsel. As per the appellant/plaintiff, the respondent/defendant was represented by Ms Nazia Parveen, Advocate, an associate of the nominated counsel although, the appearance recorded on that date was of one Ms Shefali Gupta.

7.2 We are told that Ms Parveen Advocate is an associate of the nominated counsel, i.e., one Mr Sanjeev Sagar.

8. Therefore, in our view, willy-nilly, service was not affected on the nominated counsel, i.e., Mr Sagar.

8.1 Whether Ms Parveen was authorized to accept service is now no longer moot as the written statement has been filed by the respondent/defendant, as per learned Single Judge, within 120 days commencing from 14.09.2022.

8.2 To be noted 14.09.2022 was the date when respondent/defendant received the case papers *via* email through the office of Mr Sagar. The record shows that on 01.09.2022, Ms Parveen was served with a hardcopy of the case papers *albeit* without a copy of the order dated 25.08.2022, whereby issuance of formal summons was dispensed with. Ms Parveen appears to have accepted the case papers under the impression that they were being served on her in advance i.e., prior to the matter being listed before the



court.

9. As would be evident, the respondent/defendant, through the office of the nominated counsel, took steps to file a written statement, although with some delay which was well within the condonable period.

10. Having regard to the overall circumstances, we are of the opinion that no interference is called for, for two reasons. Firstly, because of the confusion concerning the identity of the person who represented the respondent/defendant on 25.08.2022, when formal issuance of summons was dispensed with. Secondly, the respondent/defendant acted responsibly once it became aware of pending suit action through an authorized source, i.e., the office of the nominated counsel, Mr Sagar, by taking steps to file the written statement, *albeit*, within the condonable period.

11. Before we conclude we must observe that since under the 2015 Act, strict timelines have to be adhered to, courts should issue formal summons whether or not the defendant(s) are represented by nominated counsel. The time for filing the written statement commences from the date when formal summons is issued. If that practice had been followed, the complication which has arisen in the instant case could have been avoided.

12. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 28, 2024 / tr