



2024:DHC:7030



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% *Date of decision: 11<sup>th</sup> September, 2024*

+ CM(M) 3383/2024 & CM APPL. 53149/2024 & CM APPL. 53150/2024

SMT. ANITA GOYAL & ANR. ....Petitioners

Through: Mr. Ankit Rana with Mr. Gagan  
Bhatnagar, Advocates.

versus

SH. VARUN BATTA ....Respondent

Through: Mr. Navneet Sharma, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**JUDGMENT (oral)**

1. Petitioners are defending a commercial suit and this happens to be a second round of litigation. Earlier when the petitioners had approached this Court by filing CM(M) 2054/2023, in the interest of justice, the petitioners (defendants before the learned Trial Court) were granted a final opportunity to file a common written statement subject to following conditions:-

*“11. Therefore, to balance the interest of justice the Petitioners are granted a final opportunity to file a common written statement along with documents relied upon on or before 22.12.2023 on the following terms:*

*11.1. In case, the Petitioners fail to file the common written statement and documents they will be liable to pay costs of Rs. 50,000/- for delay caused and their right to file written statement will stand fortified.*

*11.2. The written statement will be duly accompanied with an*



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*affidavit of admission/denial of the documents filed with the plaint.*

*11.3. Subject to the Petitioners filing the written statement, documents and affidavit of admission/denial on or before 22.12.2023, the Respondent will file his replication within four (4) weeks thereafter along with affidavit of admission/denial of documents filed with the written statement.*

*12. The learned Trial Court is requested to fix the matter before it on 23.12.2023 or any other date as per the convenience of the said Court, for verifying the Petitioner's compliance.*

*13. It is clarified that since this order has been passed relying upon the statement of the Petitioner that he has not received summons in the suit from the registry, in the event it transpires from the record of the Trial Court that the summons were indeed issued and served on the Petitioner, the Trial Court will be at liberty to recall the permission to file written statement granted by this Court to the Petitioner.*

*14. With the aforesaid direction, the present petition is disposed of. Pending applications, if any, stand disposed of."*

2. It seems that in view of the aforesaid observations made in para No.13, the matter was again considered by the learned Trial Court and vide impugned order dated 31.05.2024, the learned Trial Court came to the conclusion that the summons were indeed issued and served upon the defendants and, therefore, the order permitting filing of written statement had been recalled, in view of the liberty granted in this regard by this Court and, resultantly, the defence of the defendants has been struck off.

3. The sole emphasis in the present petition is with respect to the fact that though the copy of the order of the Court and copy of the plaint and documents were received through 'electronic mode' but there was never any summons along with such copy of plaint,



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documents and order. It is, therefore, submitted that since these documents were not accompanied by any summons concerning a Commercial Suit, the learned Trial Court should not have ordered striking off their defence.

4. Learned counsel for the respondent/plaintiff also appears on advance notice and during course of the consideration of the present petition, he, admitted that only plaint, documents and order of the Court had been sent through electronic mode.

5. After some arguments, learned counsel for the plaintiff/respondent, very fairly, submitted that since the summons were not accompanying such attachment and since the suit filed by the plaintiff (respondent herein) is unnecessarily lingering on, he would have no objection if the written statement, which has already been filed by defendants, is permitted to be taken on record but subject to reasonable cost.

6. Learned counsel for the petitioners also volunteers that he would have no objection in case some reasonable cost is imposed.

7. Keeping in mind the above noted peculiar factual aspect that copy of the petition only had been sent, which was not accompanying summons as such, and also taking note of the gracious concession given by the learned counsel for the plaintiff/respondent, the present petition is disposed of with the directions that the written statement which has already been filed by the petitioners herein would be deemed to be on record and the defence of the petitioners also stands



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restored. However, for causing delay in the matter, they are burdened with cost of Rs.20,000/-, which would be paid to the opposite side within one week.

8. The petition stands disposed of in the above terms.

**(MANOJ JAIN)**  
**JUDGE**

**SEPTEMBER 11, 2024**  
**st**