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

% *Date of decision: 19th September, 2024*

+ CM(M) 3415/2024, CM APPL. 54751/2024 & CM APPL. 54752/2024

SHRI MANISH SHARMAPetitioner

Through: Mr. Vikram Saini with
Mr. Dharmendra Chaudhary,
Advocates.

versus

SMT ANITA LUTHRA & ANR.Respondents

Through: Ms. Rajani Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defendant before the learned Trial Court and is defending a commercial suit.
2. Few dates are admitted i.e. the defendant was served on 18.03.2024 through his brother and the written statement was submitted through e-filing module on 17.07.2024 and submitted by way of hard copy on 18.07.2024.
3. Learned counsel for the petitioner/defendant, in all fairness, admits that even when the written statement was filed through e-filing module before the learned Trial Court, it was filed on 121st day, reckoned from the date of service upon the defendant.
4. He, however, states that no litigant should be penalized for inaction on the part of his counsel.



5. The attention of this Court has been drawn towards the attestation of Statement of Truth which bears date of 15.07.2024. It is contended that the written statement was prepared and got attested and notarized on 15.07.2024 but the concerned counsel did not submit it then and there and, therefore, delay of one solitary day has invited such an extreme adverse order whereby the written statement has been taken off the record.

6. Unfortunately, the position is no longer *res integra* and the timeline fixed with respect to the commercial cases is rigid and inflexible and it cannot be extended under any circumstance whatsoever.

7. 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. Reference may be had to para 8 of the said judgment which reads as under:-

“8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and



on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty 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.”

Equally, in Order 8 Rule 1, a new proviso was substituted as follows:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty 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 was re-emphasised by re-inserting yet another proviso in Order 8 Rule 10 CPC, which reads as under:

“10. Procedure when party fails to present written statement called for by court.—*Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:*

Provided further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

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."

8. 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.

9. Though the written statement may indicate that it was got notarized and attested on 15.07.2024 but there was no purpose in getting it attested and then not filing the same before the learned Trial Court. The blame cannot be put on the shoulders of the counsel, merely to earn some compassion. We need not reiterate that these timelines are rigid and have been introduced in Commercial Courts Act, 2015 with the objective to ensure speedy disposal of such matters involving 'Commercial Disputes'.

10. Viewed thus, this Court does not find any substance in the present petition. The same is, hereby, dismissed.

(MANOJ JAIN)
JUDGE

SEPTEMBER 19, 2024/st