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

% ***Date of decision: 24<sup>th</sup> October, 2024***

+ CM(M) 3699/2024 & CM APPL. 62678-62679/2024

VIVEK KUMAR SAXENA

.....Petitioner

Through: Mr. A. Mishra with Sudhanshu M.  
Kumar and Mr. Nandan Kumar,  
Advocates.

versus

M/S COLLEGE BOOK STORE

.....Respondent

Through: None.

**CORAM:**

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

**J U D G M E N T (oral)**

1. Respondent has filed a suit seeking recovery.
2. It concerns a commercial dispute.
3. Admittedly, defendant (petitioner herein) was served with summons and copy of plaint on 06.06.2023.
4. The next date of hearing before the learned Trial Court was 02.09.2023 but on that date, nobody appeared from the side of the defendant.
5. Accordingly, the defendant was proceeded against ex-parte and his right to file written statement was also closed.
6. On 20.09.2023, the defendant moved an application mentioning therein that he had not received the complete set of petition and, therefore, prayed that the *ex-parte* order may be set aside and he may be provided with complete set of legible copies.
7. Though vide order dated 16.12.2023, *ex-parte order* was set



aside but the petitioner was not been permitted to place on record any written statement.

8. Reference has been made to order dated 23.01.2024 merely to show that even learned Trial Court noted that several pages were not legible. Fact, however, remains that according to plaintiff, even he did not have legible copies as the originals thereof had been sent to defendant.

9. Defendant filed two applications under Order V Rule 2 along with Order IX Rule 7 CPC, inter alia, seeking directions to the plaintiff to supply legible copies of some pages of plaint and/or its annexures which were not there even on the court file and for setting aside ex-parte proceedings. Such application has also been dismissed on 19.03.2024.

10. It is in the above said premise that the petitioner has challenged orders dated 02.09.2023, 16.12.2023, 23.01.2024 and 19.03.2024.

11. This Court is conscious of the fact that the suit in question is commercial in nature and the Commercial Court Act, 2015 has been enacted with a specific purpose i.e. to ensure expeditious disposal of commercial suits. There are certain timelines which have been prescribed and as per specific provision of law and as per various judicial pronouncements, these timelines are inflexible and cannot be disregarded.

12. The relevant provision under Order VIII Rule 1 CPC, meant for a Commercial Court, for filing a written statement reads as under:-

*“ 1. **Written Statement.** - The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*



*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 twenty days from the date of service of summons and on expiry of one hundred 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."*

13. Admittedly, the petitioner herein had received summons and plaint on 06.06.2023.

14. Even if the plaint was incomplete or even if some documents were not legible, the petitioner had no business to keep on sitting merrily and not immediately rushing to the Court.

15. As per the above said specific provision, the initial onus is on the defendant to file written statement within a period of 30 days and in case, he fails to file written statement within the above said period of 30 days, he can be allowed to file written statement on such other day as may be specified by the Court, *for the reasons to be recorded in writing and on payment of such cost, as the Court may deem fit.*

16. Though, the outer permissible limit to file written statement can be construed to be of 120 days but that does not mean that, once having received the summons, any defendant can walk-in anytime, at his own whims and fancies, and can contend that he should be given a fresh lease of life because of the fact that he had not been given a complete set of documents.

17. If at all, the defendant was having any concern with respect to non-supply of complete set of documents or if according to him, certain pages were not legible, it was expected of him to have knocked the doors



of learned Trial Court immediately. Nothing of that sort was ever contemplated or thought of by the petitioner herein. He chose not to appear, even, on the date when the matter was fixed before the learned Trial Court.

18. On 02.09.2023, there was no appearance from his side and by that time the matter was already around three months' old, reckoned from the date of service upon him.

19. Undoubtedly, the Court can always extend period of filing of written statement beyond 30 days but the Court cannot do the same on its own. It could have been done only when the defendant had appeared before the Court and had submitted and demonstrated that the set supplied to him was either incomplete or illegible. Since the petitioner did not even bother to appear before the learned Trial Court and filed an application after 3½ months of service, he cannot expect that he would, automatically, become entitled for a fresh lease of life.

20. The bare language of said Section empowers the Court to extend the period for filing written statement but it presupposes twin conditions *viz* any such defendant must approach Court within 30 days and must assign some reason which precluded him from filing written statement. Only, thereafter, Court can record some reasons and grant him time, with any condition as it may deem fit.

21. Unquestionably, service has to be meaningful and it is obligatory to ensure that the summons accompany the complete set of plaint and documents. Generally, the Ahlmad of the court, when prepares summons, ensures that such summons is duly accompanied with complete set of plaint. Be that as it may, Court cannot assume *suo*



*moto* that the set, so supplied, was not complete or that some documents were not legible.

22. It is for the recipient to raise protest and grievance in this regard.

23. Thus, it was incumbent on the part of the defendant to have immediately rushed to the Court, particularly, keeping in mind the rigid timeline provided in the Act but for the reasons best known to him, he approached the Court only on 20.09.2023.

24. This Court cannot come to rescue of a litigant who is in complete hibernation mode.

25. Even if it is assumed, as contended, that right to file written statement could not have been closed within permissible limit of 120 days, fact remains that defendant cannot seek any relief in the given circumstances as he did not approach the court immediately. Merely by coming to the court, at last moment, he cannot expect to earn compassion, particularly, when the case in hand concerns a commercial dispute.

26. Moreover, it is also not explained as to why the petitioner has taken another period of six months in approaching this Court.

27. Viewed thus, this Court does not find any merit in the present petition.

28. The petition is, accordingly, dismissed.

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

**OCTOBER 24, 2024/st**