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

+ **CM(M) 3841/2024**

M/S MAHAVIR ENTERPRISES AND ANRPetitioners

Through: **Mr. Ravinder Gupta, Adv**

versus

M/S KARANGAR TEXTILES PVT LTDRespondent

Through: **Ms. Ritu Jain, Adv**

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **18.11.2024**

CM APPL. 66921/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 3841/2024

1. Petitioner has challenged the order dated 15.10.2024, passed by the learned District Judge (Comm. Court), in CS (Comm.) No. 271/2023.
2. Petitioner is the defendant in the Commercial Suit before the trial court. Vide order dated 15.10.2024, an application filed by the petitioner under Order 8 Rule 1 CPC was dismissed and the written statement was taken off the record and the defence of the petitioner was struck off.
3. Admittedly, summons were served upon the petitioner on 02.06.2023. Application under Order 8 Rule 1 CPC was filed by the petitioner along with written statement on 03.10.2023.



4. Learned counsel for the petitioner has made twofold submissions, firstly being that defendant was ignorant of the timelines provided by law to file the written statement and second being that the summons were received by his employee on 02.06.2023, however, he forgot to handover the summons to the petitioner and it was only after 12 days i.e. on 14.06.2023, he handed over the summons and documents to the petitioner. Hence, in effect, summons were received by the petitioner on 14.06.2023 and thus computing in this manner, written statement filed along with the application under Order 8 Rule 1 CPC is within the extended window period, provided under Order 8 Rule 1 CPC.

5. Petition has been vehemently opposed arguing that written statement was not filed within the period specified under Order 8 Rule 1 CPC and therefore the defence of the petitioner has been rightly struck off by the learned trial court.

6. The present case is squarely covered by the decision of the Supreme Court in the case of **M/s. SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors. (2019) 12 SCC 2010**, wherein, the Hon'ble Court held 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 V, 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 days, 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 VIII 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-emphasized by re-inserting yet another proviso in Order VIII Rule 10 CPC, which reads as under:-

“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 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 VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.”



7. Law provides timelines for the disposal of the commercial disputes and therefore there has to be strict adherence to the timelines. Petitioner himself admits that the summons were received on 02.06.2023 by his employee. He cannot be allowed to plead that he received the summons on 14.06.2023 only because his employee had handed over the summons to him after about 12 days. The time limitation provided under Order 8 Rule 1 CPC shall start to run from the date of service of summons i.e. 02.06.2023. That being so, the written statement sought to be filed along with application under Order 8 Rule 1 CPC on 14.06.2023 was beyond the stipulated period prescribed for filing written statement and court has no power to extend the said period.

8. Learned trial court rightly ignored the plea of ignorance taken by the petitioner and rightly concluded that written statement filed by the petitioner cannot be taken on record.

9. The Court does not find any illegality or impropriety in the orders passed by the learned District Judge. There is no merit in the petition. The same is accordingly dismissed.

RAVINDER DUDEJA, J.

NOVEMBER 18, 2024

RM