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

+ CM(M) 3848/2024 & CM APPL. 67252/2024 stay, CM APPL. 67253/2024 (exclude the time during which petitioner was prosecuting the FAO 30/2024)

M/S VIRAT PHARMACY (VIRAT HOSPITAL)Petitioner

Through: Mr. Sumeet Kaul and Mr. Himanshu
Singhal, Advocates.

versus

M/S TRANSLUMINA THEREPEUTICSRespondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

25.11.2024

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1. The petitioner has impugned the order dated 11.01.2024 passed by the learned District Judge, Commercial Courts, Tis Hazari Courts in CS (COMM) 1136/2022 whereby the application filed by the petitioner under Order IX Rule 7 CPC seeking to set aside the ex parte order dated 31.05.2023 and for permission to file the written statement has been dismissed.
2. Petitioner is the defendant in the recovery suit filed by the plaintiff. Despite service of summons, petitioner did not appear and was therefore proceeded ex parte vide order dated 31.05.2023.
3. It is borne out from record that petitioner was served with summons through one Shikha whose name was wrongly noted as Sushila by the



process server, who also appended the stamp of Virat Hospital with her signatures.

4. The main contention of learned counsel for the petitioner is that no summons were received and it derived the knowledge only during the settlement talks in the first week of November 2023 when the AR of the respondent informed about the passing of the ex parte order.

5. Learned counsel for the petitioner further submits that petitioner-M/s Virat Pharmacy even though is a part of Virat Hospital but is a different entity from the hospital. It has been further submitted that Shikha who allegedly received the summons on behalf of Virat Hospital did not inform the petitioner about the summons, due to which reason petitioner remained unrepresented before the trial court.

6. Per contra, learned counsel for respondent has submitted that the name of Shikha is mentioned as an employee in the list of employees filed by the petitioner itself before the trial court. She not only received the summons but appended the stamp of the hospital with her signatures. He further contends that vide email dated 25.01.2023, petitioner was also informed of the next date of hearing as 10.02.2023 and thus despite knowledge of the pendency of the suit and the date fixed, petitioner chose not to appear before the Court.

7. The learned trial court took note of the report of the process server that the petitioner was also served through email dated 24.12.2022. Since the tracking report of the registered post was not placed before the court, the trial court issued fresh summons for 24.04.2023. Be that as it may, the screenshot of the email sent by the process server clearly reveals that the petitioner was duly served on 24.12.2022 itself. Not only this, petitioner was



also conveyed the next date of hearing as 10.02.2023 vide email dated 25.01.2023.

8. The purpose of issuing summons is to make the defendant aware of the pendency of the suit so that if he chooses, he may contest the case by filing the written statement. Having derived the knowledge of the filing of the case through emails dated 24.12.2022 and 25.01.2023, it does not lie in the mouth of the petitioner to claim that he was not having knowledge of the pendency of the case. In any case the record further reveals that summons were duly served to the petitioner through its representative Shikha. The principal is liable for the acts of the agent. Petitioner cannot be allowed to plead that it was not informed of the receipt of summons from the court by its representative Shikha, who admittedly is one of the employees of Virat Hospital which also runs Virat pharmacy.

9. The written statement is to be ordinarily filed within a period of 30 days. The law provides a grace period of further 90 days which the court may grant for reasons to be recorded in writing and on payment of such cost as it deems fit to allow such written statement to come on record. However beyond 120 days from the date of service of summons, the defendant forfeits its right to file the written statement, and the court has no option to accept the written statement to be taken on record.

10. The law provides timelines for the disposal of commercial disputes, and therefore, there needs to be strict adherence to the timelines.

11. The petitioner was duly served with notice through the email on 24.12.2022, it was again communicated of the next date vide email dated 25.01 2023 and was later served through its representative on 24. 04. 2023. Admittedly the written statement was not filed within the stipulated period



of 120 days as prescribed for filing of written statement in cases relating to commercial disputes.

12. Under these circumstances, the Court finds no ground for interfering in the impugned order passed by the learned trial court. There is no merit in the petition, and the same is accordingly dismissed.

RAVINDER DUDEJA, J

NOVEMBER 25, 2024/ib