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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 12.12.2024

+ CM(M) 4026/2024

SIKKA KARS GLOBAL PVT LTD & ANR.Petitioners

Through: Mr. Gurmuk Singh Arora, Ms.
Ayushi Bisht and Mr.
Kunal Madan,
Advocates.

versus

ABHAY KUMAR JAINRespondent

Through: Mr. Sanjeev Ralli, Senior
Advocate with Mr. Chetanya
Baweja, Mr. Anmol Jain, Mr.
Ravi Kant Yadav, Mr. Akshay
Dhawan, Advocates with
defendant in person.

CORAM:-

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT (ORAL)**RAVINDER DUDEJA, J.****CM APPL. 71981/2024 (exemption)**

Allowed, subject to all just exceptions.

This application stands disposed of.

CM(M) 4026/2024 & CM APPL. 71980/2024 (stay)

1. The petition impugns the order dated 28.11.2024, passed by the learned District Judge (Commercial Court)-02, West District, Tis Hazari Court in CS (COMM) No. 225/2020.



2. Petitioners are the defendant in the suit filed by the respondent, seeking recovery of possession, arrears of rent, damages, mesne profits and injunction. Petitioners contested the suit by filing written statement within the statutory framework.
3. The learned counsel for the petitioners submits that due to oversight by the previous counsel, the affidavit of admission/denial was not filed within the prescribed time, leading to the defence being struck off despite petitioners being granted an opportunity to rectify the omission.
4. Petitioners claim that they were misled by their counsel, who assured them that all the procedural requirements had been fulfilled, resulting in false impression that the case was proceeding appropriately. However, they later learnt that their defence had been struck off solely due to the counsel's failure to file the affidavit on time.
5. The counsel of petitioners further submits that respondent did not invoke pre-litigation, as per requirements of Section 12 of the Commercial Courts Act, 2015 [**'the Act'**] before instituting the suit.
6. It has been submitted that the Trial Court had struck off the defence of petitioners vide order dated 02.08.2023, whereafter the petitioners filed an application under Section 151 CPC for recall of order dated 02.08.2023 and under Order XVIII Rule 17 CPC for recall of respondent's witnesses but both the applications were dismissed with cost of Rs. 25,000/- each to be paid to the respondent. Aggrieved by the impugned order dated 28.11.2024, petitioners have preferred



the present petition.

7. A perusal of the Trial Court record reveals that vide order dated 10.11.2022, the Trial Court had noticed that affidavit of admission/denial was not in accordance with the format of the Act and as per the Delhi High Court Rules, and therefore, subject to the cost of Rs. 5,000/-, directions were issued to the petitioners to submit the affidavit within three days.

8. Since neither the cost was paid nor the affidavit of admission/denial was filed by the petitioners in the desired format, the defence was struck off vide order dated 13.12.2022, which is extracted hereinbelow:-

“Present: Sh.Akshay Dhawan, counsel for plaintiff with plaintiff

Sh.Avinash Amit, counsel for defendant

Vakalatnama on behalf of defendant is filed. Same is taken on record.

Cost of Rs.5000/- imposed upon defendant vide order dated 10.11.2022 vide which application of the defendant filed under Order IX Rule 7 CPC was allowed, is paid to the plaintiff.

Despite repeated directions, affidavit of admission/denial is not filed by defendant as per the format of Commercial Courts Act and Delhi High Court Rule. Defence is struck off.

Renotify for PE on 19.1.2023. Evidence by way of affidavit be filed 15 days in advance prior to next date of hearing with advance copy to other side.”

9. The order of the Trial Court dated 17.07.2023 reveals that affidavit of admission/denial as per the Act was subsequently filed.

The said order is extracted hereinbelow:-

“Present : Sh. Abhay Kumar Jain, plaintiff in person

Sh. Rahul Kumar Gupta, proxy counsel for defendant
with AR of defendant



Plaintiff has filed an application under Order XXXIX Rule 10 R/w Section 151 CPC seeking directions to the defendants for payment of admitted rent / usage and occupation charges. Copy of the same is supplied to other side.

Plaintiff has also filed reply to the application filed by defendants seeking recalling of order dated 13.12.2022.

Arguments heard and record perused.

The perusal of record reflects that despite repeated directions, the defects in Affidavit of Admission/Denial filed by the defendant was not cured. Eventually, it was only when the defence of defendant was struck off that the defendant filed affidavit of Admission/Denial as per Commercial Courts Act. Learned proxy counsel for defendant submits that immense hardship would be caused in case the order dated 13.12.2022 is not recalled.

Considering the submissions, application is allowed as Affidavit of Admission/Denial was filed but same was not as per the Commercial Courts Act subject to a cost of Rs.10,000/- to be paid to the plaintiff. Affidavit of Admission/Denial be filed on behalf of defendant within three days with advance copy to other side.

Renotify for reply to the application filed by the plaintiff, for admission/denial of documents/framing of issues and case management. Parties / AR of parties to appear in person. Director of the defendant company is directed to appear in person to answer certain queries of the Court.

Put up on 2.8.2023”

10. On 02.08.2023, taking note of the fact that petitioners had not filed the requisite affidavit within three days as per order dated 17.07.2023, nor has paid the cost and upon considering the conduct of the petitioners, the defence of the petitioners was again struck off by the Trial Court.

11. Petitioners then filed an application under Section 151 CPC for recall of order dated 02.08.2023 but the same dismissed by the Court citing repeated non-compliance and lack of diligence by the petitioners. The Trial Court noted that despite multiple opportunities, the petitioners consistently failed to comply with the procedural



timelines and Court directions, reflecting their negligence rather than inadvertence.

12. Petitioners also filed separate applications under Order XVIII Rule 17 CPC for recall of plaintiff's witnesses. The said applications were dismissed vide order dated 28.11.2024. The applications were deemed as an attempt to fill lacunae in the case which was held to be impermissible under Order XVIII Rule 17 CPC. The order emphasised that such powers should be exercised sparingly and in exceptional circumstances to prevent injustice, which was not found evident in this case.

13. In cases of commercial nature, parties are required to file their respective affidavits of admission/denial. However, such requirement is not mandatory, and therefore, the defence of defendant cannot be struck off merely on this ground. This Court in the case of **Sudhakar Singh & Anr. vs. M/S Webkul Software Pvt Ltd** [CM(M) 50/2020] held as under:-

“.....Under Order VIII CPC, as amended by Commercial Courts Act, 2015, filing of affidavit of admission/denial as applicable to commercial courts is not compulsory. Filing of affidavit of admission/denial has been made compulsory only in Delhi High Court (Original Side) Rules, 2018. Thus, striking off the defence despite written statement being placed on record, on the ground that affidavit of admission/denial was not filed is not tenable. Same is accordingly set aside.”

14. Since the written statement in the present case had been filed within the prescribed timeline, the order of the Trial Court striking of the defence of the petitioners merely on the ground of non-filing of the affidavit of admission/denial in the prescribed format cannot be



sustained.

15. The learned counsel of respondents submits that affidavit of admission/denial has not been filed even till date and that the Trial Court order wrongly records about the same having been already filed by the petitioners.

16. Be that as it may, petitioners would be at liberty to file the affidavit of admission/denial within the period of two weeks, in case the same is not already filed. The written statement already filed by the petitioners shall be taken on record.

17. The petition with the pending application is disposed of in these terms.

CAV 600/2024 (U/S 148A by proposed caveator/respondent)

In view of the aforesaid order, caveat stands discharged.

RAVINDER DUDEJA, J

DECEMBER 12, 2024/vp