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

+ **CM(M) 159/2025**

MOHD . YASEEN

.....Petitioner

Through: **Mr. Arvind Choudhary, Mr. Vinay
Kumar and Ms. Natasha Dabas, Advs.**

versus

NAWAL KISHORE SONI

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **27.01.2025**

CM APPL. 4757/2025 (exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 159/2025 & CM APPL. 4756/2025 STAY

1. This petition has been filed under Article 227 of the Constitution of India, impugning the order dated 17.12.2024, passed by the learned District Judge (Comm.) in Civil Suit (Comm.) No. 718/2024, titled “Nawal Kishore Soni Vs. Mohd. Yaseen”, whereby, the learned trial court dismissed the application of the petitioner filed under Order 47 Rule 1 of the Code of Civil Procedure, 1908 [“CPC”].
2. Petitioner is the defendant in the Suit for Recovery filed by the respondent. Petitioner did not file the written statement within the stipulated period, therefore, his right to file the written statement was forfeited vide order dated 02.12.2024.



3. Application filed for review of the aforesaid order has been dismissed vide order dated 17.12.2024. It is this order, which has been challenged by filing the present petition.
4. Learned counsel for the petitioner submits that the trial court has failed to take note that there was no personal service of summons upon the petitioner. Service of summons has been shown through WhatsApp on mobile No. 8447869785, but the same is also not a legal and valid service as the said mobile number does not belong to the petitioner, but belongs to his son Mohd. Hashim.
5. Learned counsel further states that there has been no service of summons through Speed Post and that petitioner derived the knowledge of the suit only in the first week of October 2024, when respondent informed about the filing of the case to the son of the petitioner.
6. Immediately thereafter, petitioner contacted his Advocate, who obtained the copy of the plaint from the Advocate of the respondent and prepared the written statement, but could not file the same as the trial court had closed the right of the petitioner to file the written statement.
7. Perusal of the record shows that the summons were sent to the petitioner. As per the report of the Process Server dated 26.07.2024, son of the petitioner informed the Process Server that petitioner had gone to Mumbai and does not know as to when he will be coming back and refused to accept the summons in the name of his father.
8. Perusal of the record further reveals that the summons were also sent through Speed Post and the Tracking Report clearly shows that the petitioner had refused to accept the summons on 01.08.2024.



9. Order of the trial court also records that petitioner was delivered with summons and copy of the plaint through WhatsApp on mobile No. 8447869785 on 30.07.2024. There is no material on record to come to a conclusion that the said phone number is not being used by the petitioner.

10. The argument of learned counsel that petitioner was never served with the summons is therefore contrary to the record, inasmuch as, petitioner has been served on 30.07.2024 and 01.08.2024.

11. In view of the amendments made in Code of Civil Procedure, 1908 (CPC) in Order 8 Rule 1 & 10 and Order 5 Rule 1 (1), in respect of suits relating to commercial disputes, written statement is to be filed within a period of 30 days from the date of service of summons on the defendant. On failure to file the written statement within the said period, a grace period of further 90 days is granted under CPC to file the written statement, which the Court may employ for the reasons to be recorded in writing and on payment of such cost by the defendant as the Court may deem fit. But on expiry of 120 days from the date of service of summons on defendant, the defendant forfeits the right to file the written statement and the Court does not have the power to take the written statement on record.

12. The trial court rightly relied upon the judgment of the Supreme Court in the case of **SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. (2019) 12 SCC 210**, while holding that the delay beyond 120 days cannot be condoned and directed that the written statement filed by the petitioner be taken off the record.

13. There is no illegality or perversity in the impugned order passed by the learned trial court, and therefore, the same does not call for any interference.



14. There is no merit in the petition. Petition is accordingly dismissed.

RAVINDER DUDEJA, J.

JANUARY 27, 2025

RM