



2025:DHC:3843-DB



\$~7

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

%

Date of Decision : 07.05.2025+ **RFA(COMM) 140/2024 & CM No.22508/2024**

VIJAY SINGHAL

.....Appellant

Through: Mr. Archit Singhal, Ms. Ritu Jain &
Ms. Kritika Bajaj, Advs.

Versus

M/S SANGEETA FURNITURE CONCEPTS

.....Respondent

Through: Mr. Anirudh Gupta, Adv.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The appellant [**the defendant**] has filed the present appeal impugning the judgment dated 22.12.2023 [**impugned judgment**] passed by the learned Commercial Court decreeing the suit filed by the respondent [**the plaintiff**] in favour of the plaintiff for an amount of Rs.1,90,940/-, along with interest at the rate of 12% per annum from the date of payment, that is, from 09.12.2016 till its actual realisation, along with costs.
2. The impugned judgment was rendered without considering the defence of the defendant as the same was struck off by the learned Commercial Court by an order dated 23.12.2022, as the defendant failed to file the affidavit of admission/denial of documents, which was required to be



filed along with the written statement of defence [WS]. The plaintiff had filed the said suit for recovery of an amount of ₹3,20,329/- along with *pendente lite* and future interest at the rate of 12% per annum, as well as costs.

3. It is the plaintiff's case that it had advanced an amount of ₹1,90,940/- for the purchase certain goods [machine/hardware] to be delivered within a period of fifteen (15) days. However, the defendant failed to supply the goods within the stipulated time or to refund the amount advanced by the plaintiff.

4. There is no dispute between the parties that the plaintiff had paid an amount of ₹1,90,940/- by way of a cheque bearing no. 000034 dated 09.12.2016, drawn on HDFC Bank. However, the defendant had raised certain objections including as to the jurisdiction of the learned Commercial Court to entertain the suit. The defences raised by the defendant were not considered, even though a WS had been filed, as it was not accompanied by an affidavit of admission/denial of documents and was, therefore, not taken on record.

5. Admittedly, the summons in the said suit was served on the defendant on 25.08.2022. The matter was listed before the learned Commercial Court on 06.09.2022 and the defendant was directed to file the WS "within the stipulated period with an advance copy to the plaintiff". The matter was thereafter listed on 09.11.2022 and the order sheet of the learned Commercial Court indicates that the learned Judge was on leave on that date. However, the Reader of the learned Commercial Court issued an order directing both the parties to file their affidavits of admission/denial of documents and, as per the learned Judge's instructions, listed the suit for



further proceedings on 23.12.2022. On the said date, the defendant's defence was struck off even though the defendant had filed the WS on 18.10.2022. It is the defendant's case that, as on that date, the extended period of limitation for filing the WS had not yet expired. The summons had been issued to the defendant on 25.08.2022 and a period of 120 (One Hundred Twenty) days had not expired from the date of issuance of the summons. It is contended that in this view, the defendant ought to have been afforded one opportunity to file an affidavit of admission/denial of documents within the period of two days that were remaining.

6. The defendant had also filed an application seeking recall of the said order, however, the same was dismissed by an order dated 22.02.2023. Although, there is no cavil that the written statement cannot be taken on record if the affidavit of admission/denial of documents is not filed and the same is mandatory. However, given the fact that the period of extended limitation within which the court could condone the delay had not expired, in our view, the defendant ought to have been given a further opportunity of at least one working day to file its affidavit of admission/denial of documents.

7. Having stated the above, it is also clear that the defendant was remiss inasmuch as he had not filed its affidavit of admission/denial of documents despite being granted an opportunity. In the given circumstances, this court is inclined to impose costs quantified at ₹25,000/- on the defendant for causing delay in the proceedings before the learned Commercial Court. The learned counsel appearing for the defendant voluntarily undertakes that the defendant shall pay costs of ₹25,000/- to the plaintiff.

8. Subject to the said cost being paid within a period of two weeks from



2025:DHC:3843-DB



date and the affidavit of admission/denial of documents being filed within the said period, the impugned judgment and decree is set aside and the suit is restored before the learned Commercial Court at the same position as obtaining on the date of the impugned judgment, that is, 22.12.2023.

9. Pending application stand disposed of.

10. The parties shall appear before the concerned Commercial Court on 22.05.2025.

11. The amounts deposited by the defendant with the Registry of this court shall abide by any further directions that may be issued by the learned Commercial Court.

12. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 07, 2025

ns/gsr

Click here to check corrigendum, if any