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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 4087/2024 & CM APPL. 73516/2024 (stay)**
GAUTAM SHARMAPetitioner

Through: Ms. Rashmi Jain and Ms. Kajal
Sharma, Advocates.

versus

KALANAURIA FOOTART PVT LTDRespondent
Through: Mr. Dheeraj Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
10.03.2025

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1. The petition impugns the order dated 10.09.2024, passed by the learned District Judge (Comm.), whereby the learned trial Court has been pleased to dismiss the application filed by the petitioner under Order VIII Rule 1 read with Section 151 CPC for setting aside the order dated 23.01.2024, whereby the defence of the petitioner/defendant has been struck off.
2. Petitioner is the defendant in the recovery suit filed by the respondent.
3. Learned counsel for petitioner submits that petitioner was never served with summons of the case. He was only served with legal notice in August, 2022 through Whatsapp. It is submitted that petitioner met with serious accident on 12.08.2021. Consequently, his leg was fractured. Thereafter, he suffered brain haemorrhage, due to which petitioner lost his memory for more than a year and still he is not in full senses.
4. It is further submitted that on 15.05.2024, petitioner met his advocate



and discussed about the legal notice which he has received on his Whatsapp and then the counsel searched online regarding the status of the case and thereupon, he derived knowledge of the filing of the suit against the petitioner.

5. It is stated that on inspection of the judicial file, it transpired that the defence of the petitioner was struck off on 23.01.2024. It is submitted that summons were not delivered personally to the petitioner and the report of process server reveals that same were served upon his nephew, Mr. Ishan Pathak, who did not apprise the same to the petitioner as he is not in talking terms with the petitioner.

6. It is submitted that learned District Judge committed grave error by overlooking the fact that there was no service of summons and without going through the report of process server, passed the impugned order causing grave injustice to the petitioner.

7. It is argued that non-appearance of the petitioner was neither intentional nor deliberate but because of aforesaid reasons.

8. Per contra, learned counsel for respondent submits that petitioner was duly served with summons along with copy of the plaint and complete set of documents through speed post on 09.12.2023 and through Whatsapp on 23.12.2023. It is argued that petitioner was fully aware of the filing of present suit and despite this, he chose not to file written statement within the stipulated period, and therefore, his defence has been rightly struck off by the trial Court.

9. Respondent has placed on record receipt of speed post along with tracking report. As per tracking report, the summons were delivered to the petitioner on 09.12.2023. Respondent has also placed on record the



screenshots of Whatsapp communication dated 23.12.2023 addressed to the petitioner sharing the summons issued by the trial Court and apprising him of the next date of hearing i.e. 23.01.2024.

10. There is no reason to dispute service of summons through speed post and Whatsapp, and therefore, the stand taken by the petitioner that summons were not served is totally contrary to the record. Moreover, the report of the process server also reveals that summons were delivered to one Mr. Ishan Pathak, who claimed himself to be a nephew of petitioner and accepted the summons on 21.10.2023. Interestingly, in the application filed by the petitioner under Order VIII Rule 1 read with Section 151 CPC, it is stated that Mr. Ishan Pathak is a neighbor of petitioner, however, while arguing today, learned counsel states that he is the nephew of the petitioner. Petitioner has, thus, taken conflicting positions, and therefore, the explanation sought to be furnished for delay in filing the written statement within the stipulated period is not acceptable.

11. Ordinarily, the written statement is to be filed within a period of 30 days. Grace period of 90 days is granted, which the Court may employ for reasons to be recorded in writing and payment of such cost as it deems fit to allow for such written statement to come on record. Beyond 120 days from the date of service of summons, the defendant(s) forfeit its right to file the written statement and the Court shall not in such cases, allow the written statement to be taken on record as the Court has no further power to extend the time beyond the period of 120 days.

12. Since written statement was not filed within the stipulated statutory period of 120 days, Court finds no reason to interfere in the impugned order passed by the learned District Judge (Comm.).



13. In my view, the order does not suffer from any illegality or perversity. The petition along with pending application, is therefore, dismissed.

RAVINDER DUDEJA, J

MARCH 10, 2025/vd