

GANGA KAVERY CONSTRUCTION PRIVATE LTD Vs. SRC
REALTORS PRIVATE LIMITED

29.11.2024

Present: Sh. Prashant Kumar, Sh. Satish Gulati, Sh. Talha Abdul
Rahman and Sh. M. Shaz Khan Ld. Counsels for plaintiff.
Sh. Kanishk Arora Ld. Counsel for defendant no.1 & 2
through VC.
None for defendant no.3 to 6.

Record reveals that defendant no. 3 to 6 have not been appearing in the matter despite being served through publication on 03.09.2024. Today also none has appeared on their behalf. It is already 2 p.m. Hence ***defendant no 3 to 6 are hereby proceeded ex parte.***

An application for condonation of delay in filing the written statement is pending adjudication.

It is submitted in the application that defendant no.1 & 2 had appeared before the Court for the first time on 03.07.2024 and received the copy of the plaint and documents of present suit only on 24.07.2024 i.e. after 21 days of directions passed by the Court. However, defendant no.1 & 2 faced impediments in obtaining the necessary records based on which the written statement was to be prepared. On 23.08.2024 defendants filed written statement on e-filing portal vide E-diary no. ADL2023000191D202400011 but the same was received back due to defects. On 24.08.2024 written statement was again filed on e-filing

portal after curing the defects and thereafter hard copy of the same was supplied to the Court Master on 26.08.2024. It is therefore, submitted that there is a delay of only 4 days in filing the written statement beyond the 30 days period from the date of service of the plaint upon the counsel of defendant no.1 & 2. It is further submitted that no prejudice would be caused to the plaintiffs if the delay in filing the written statement is condoned. Therefore, it is prayed that present application for condoning the delay of 4 days in filing the written statement being bonafide one be allowed in the interest of justice.

Ld. Counsel for plaintiff has no objection if the delay is condoned and WS is taken on record.

After considering the arguments on the application filed on behalf of defendant, advanced by Ld. Counsels for both the parties, this Court is of the considered view that the consideration which cannot be ignored that if sufficient cause for excusing delay is shown, the discretion given to the court to condone delay. The discretion has been deliberately conferred upon the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. It is further worthwhile to note that the procedural technicalities should not come in the way of justice. Accordingly the court is inclined to exercise the discretion in favour of the defendant. In the interest of justice and in view of aforesaid circumstances, the present application under Order 8 Rule 1 CPC stands allowed.

Written statement of the defendant no.1 & 2 is taken on record.

Application of defendant no.1 & 2 stands disposed off.

Adjournment is sought on behalf of proxy counsel for defendant no.1 & 2 for arguments on the ground of personal medical emergency of main counsel.

However, Ld. Counsel for plaintiff vehemently presses for his application u/o 39 Rule 1 & 2 CPC thereby restraining defendants no.1 to 5 from disturbing the peaceful functioning of plaintiff no.1 company till the decision of the suit.

Ld. Counsel for defendant submits that he could not prepare his arguments on above-said application due to medical emergency with him as well as with his senior counsels. It is further submitted that he has already filed an application seeking adjournment through e-mail.

Ld. Counsel for plaintiffs prays for status-quo order thereby directing the defendants no.1 to 5 not to create disturbance to the peaceful functioning of plaintiff no.1 company till the next date of hearing.

Ld. Counsel for defendant submits that the petition u/s 241 & 242 of Companies Act, 2013 filed by defendant company is pending adjudication before the Hon'ble National Company Law Tribunal and the civil courts has no jurisdiction to entertain the present case as per Section 430 of Companies Act, 2013 therefore, this Court cannot grant interim injunction in the present matter.

In view of the submissions made by both the counsels, this Court is of the opinion that the application under Order 39 Rule 1 & 2 r/w section 151 of CPC should be decided after hearing the arguments of

both the counsels on its merit. It is further submitted by Ld. Counsel for plaintiff that the arguing counsel will convince this Court on the point of jurisdiction on the next date of hearing.

Put up for arguments on the point of maintainability of the suit and on the application under Order 39 Rule 1 & 2 CPC on 02.12.2024 at 2 p.m.

(Pooja Jain)
District Judge-03/NB
East/KKD Courts/Delhi
29.11.2024