

CS (COMM.) 221/19
RAJESH KATHPAL
Vs.
M/S THUKRAL STEEL CORPORATION

06.06.2022

ORDER

1. Vide this order, I proposed to dispose off the application of the plaintiff u/o V Rule 1 Proviso and Order VIII Rule 1 Proviso r/w Section 151 CPC for striking off the defence of the defendant.

2. The contention of the plaintiff is that the copy of the plaint along with documents were at first supplied to the defendant on 15.07.2019 and thereafter, along with the summons of the suit on two occasions i.e. 16.09.2019 and 28.10.2019. It is stated that the defendant was supposed to file Written Statement on or before 25.02.2020 i.e. before the expiry of 120 days from 28.10.2019, if this date is taken as the date of service of the defendant, but the defendant has filed the Written Statement on 28.08.2020 i.e. much after the expiry of stipulated period of 120 days and, therefore, same deserves to be taken off the record and the defence of the defendant deserves to be struck off.

3. The application is vehemently contested by the defendant. It is stated that the copy of the plaint received by the defendant along with the summons of the suit was not complete and this fact was intimated to the court on 04.12.2019 in pursuance to which, the Ld. Proxy counsel for defendant undertook to supply complete set of plaint along with documents to the counsel for the defendant during the course of the day. It is stated that the Ld. Counsel for the plaintiff did not abide by the undertaking given to the court on the aforesaid date and ultimately, copies

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were supplied to the defendant on 13.03.2020. It is further stated that due to spread of Covid-19 pandemic, nationwide lockdown was imposed w.e.f. 22.03.2020 and consequently, limitation period as prescribed by all the statutes in force including the Code of Civil Procedure were kept in abeyance by various orders passed by the Hon'ble Supreme Court. It is, thus, contended that the Written Statement filed by the defendant on 28.08.2020 cannot be set to be barred the limitation and has to be held to have been filed within time.

4. I have perused the application as well as its reply and have heard Ld. Counsels for the parties.

5. Perusal of the record reveals that the suit has been filed on 27.07.2019 and came up for hearing before this court for the first time on 29.07.2019 on which date, summons were issued to the defendant. In view of the same, it is beyond comprehension as to where was the cause and occasion for the plaintiff to supply plaint as well as documents to the defendant on 15.07.2019, as contended by the plaintiff.

6. So far as the copies of plaint and documents served upon the defendant along with the summons of the suit are concerned, it needs note that on 04.12.2019, it was brought to the notice of this court that defendant had not received the complete set of plaint and its annexures. Accordingly, Ld. Counsel for the plaintiff has undertaken to supply copy of the plaint and annexures to the Ld. Counsel for the defendant during the course of the day and the defendant was directed to file Written Statement within 30 days from the date the plaintiff supplies copy of plaint as well as documents. As per annexure D, annexed to his application by the plaintiff himself, copies of the plaint and documents (23 pages) were supplied to

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Ld. Counsel for the defendant on 13.03.2020. Therefore, in view of the order dated 04.12.2019 of this court, the defendant was required to file Written Statement within 30 days from 13.03.2020.

7. Here it needs note that the nationwide lockdown was imposed by the Govt. of India w.e.f. 22.03.2020 on account of Covid-19 pandemic. In view of the same, the Hon'ble Supreme Court vide order dated 23.03.2020 in suo motto writ petition (civil) no. 3/2020 ordered that period of limitation in all proceedings, irrespective of the limitation prescribed under general law or special laws whether condonable or not shall stand extended w.e.f. 15.03.2020 till further orders. In subsequent order dated 08.03.2021, passed in the same writ petition, the Hon'ble Supreme Court directed that in computing the period of limitation for any suit, appeal, application or proceedings, the period from 15.03.2020 till 14.03.2021 shall stand excluded and the balance period of limitation remaining as on 15.03.2020, if any, shall be available w.e.f. 15.03.2021.

8. Keeping in mind the above orders passed by Hon'ble Supreme Court, the written statement filed by the defendant on 28.08.2020 cannot be said to have been filed beyond the stipulated period of limitation.

9. Hence, the instant application is totally misconceived and is hereby dismissed.

Announced in the open court

on 06.06.2022

(VIRENDER BHAT)
District Judge (Commercial Court)
North:Rohini:Delhi/06.06.2022