

15.01.2024

Present: Sh. Purnender Rai, Ld. Proxy Counsel for plaintiff.
Sh. Harshit Thareja, Ld. Counsel for defendant no.1
and 5.

Vakalatnama filed on behalf of defendant no.1 and 5.

Memo of appearance be filed for remaining
defendants.

Joint Written Statement filed on behalf of defendant
no.1 and 5 with requisite Statement of Truth, Affidavit of
admission/denial to the documents of the plaintiff. Copy
supplied.

***An application seeking condonation of delay in
filing Written Statement has been filed on behalf of defendant
no.1 and 5. Same is treated Order VIII Rule 1 read with
Section 151 CPC, as per oral request.***

Arguments of the counsels on the application heard.

By way of this order, application seeking
condonation of delay is being considered. As on record
defendants have been **served on 30.10.2023** by way of registered
post. Admittedly, **Written Statement** has been **filed** on behalf of
defendant no.1 and 5 today itself i.e. 15.01.2024. The cause of
delay in filing the Written Statement beyond the requisite period
of 30 days from the date of service of the defendants is prayed on
the ground that there was change in the office of Counsel of
Defendants, which took time to trace the file, obtain instructions
and file Written Statement before this Court. During submissions,

certain objections of lack of necessary compliances in the plaint of the plaintiff as per Commercial Courts Act 2015 have been also prayed. In the facts of the present case, the Written Statement has been filed beyond the period of 30 days but within extendable period of 120 days. The Court has considered the facts and law on the aspect under consideration. In the binding judgment of ***Hon'ble Supreme Court of India***, passed in ***Civil Appeal No.1638/2019***, in case titled as '***M/s SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd & Ors***', dated 12.02.2019, wherein it has been held:-

“A perusal of these provisions would show that ordinarily a Written Statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such Written Statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the Written Statement and the Court shall not allow the Written Statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days”.

Accordingly, a grace period of further 90 days can be granted after lapse of period of 30 days from the service of the defendant, if adequate reasons disclosed for the delay in filing of the written statement by the defendant. The prayer/application ***under Order VIII Rule 1 read with Section 151 CPC*** is accordingly **allowed**. In the larger interest of justice, ***the Written Statement is allowed to be filed and be taken on record***. Copy already supplied to other side.

During submissions, leave has been prayed to file WS on behalf of remaining defendants and also amended WS on behalf of defendant no.1 and 5 after necessary compliances are complete by the plaintiff. Perusal of record reveals that each and every page of plaint has not been signed on behalf of plaintiff, verification clause is incomplete and same is the position in regard to the Statement of Truth filed supporting the plaint.

At this stage, Ld. Appearing Advocate for the plaintiff undertakes to cure the defects and file a complete plaint with annexures in accordance with law, within two weeks. Same is allowed with directions to supply advance copy to the appearing Counsel for defendants.

Subject to compliance by the plaintiff, defendants shall have the stipulated period of **30 days to file** their respective or joint **Written Statement(s)**, as the case may be. Let advance copy of the same be also supplied to Ld. Counsel for plaintiff.

Replication within 30 days thereof alongwith affidavit of admission/denial of documents of defendant, if any, be filed.

Put up for completion of pleadings/further proceedings on 29.05.2024.

(Preeti Agrawal Gupta)
District Judge (Commercial Court)-01
North-West, Rohini, Delhi.
15.01.2024