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

+ CM(M) 313/2026

MR RAJEEV SETHPetitioner

Through: Appearance not given.

versus

MRS. SHALEEN VIRMANI KARNIK THROUGH ATTORNEY
HOLDER, MR AMITAV VIRMAN & ANR.Respondents

Through: Mr. Karan Luthra, Ms. Aayushi S.
Khazanchi, Mr. Shiven Asthana and
Ms. Aditi Kukreja, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% **22.05.2026**

1. This hearing has been conducted through hybrid mode.

CM APPL. 8454/2026 (for stay)

2. I have heard the learned counsels for the parties and perused the record.

3. Learned counsel for the petitioner has argued that the impugned order dated 9th January, 2025 be stayed till the disposal of the present petition. The trial court has passed the impugned order without properly appreciating the facts of the case and the law. In case the impugned order is not stayed, the petition would become infructuous.

4. *Per Contra*, learned counsel for the respondent has argued that the impugned order is a reasoned order and there is no infirmity in the order. The petition has been moved only to delay the disposal of the suit.

5. The relevant portion of the impugned order reads as follows:

“2. The posers through submission made in the application



and the reply to application of plaintiff U/s 12A, are the foundations to formulates the below questions for discussions:

i. Whether an application U/s 12A of Commercial Courts Act seeking waiver is required to be moved despite the suit being accompanied with the prayer for urgent and interim relief.

ii. At what stage such an application, if is moved is to be decided i.e. either before the summons for settlement of issues are sent or after.

iii. Whether the computation of limitation for Written Statement shall commence only from the date of decision of such application seeking waiver of pre litigation mediation U/s 12A. ...

... 21. The discussion on the above provision of section 12 A coupled with the Pre Institution Mediation Rules 2018 and reading of **Patil Automation (Supra)** nowhere suggest that either Supreme Court or the legislature at any stage intended an application seeking waiver shall first be moved while the plaintiff is seeking to raise the claim of urgent and emergent nature.

22. The defendant's reliance on **Yamini Manohar (Supra)** through **One Card Solution Pvt. (Supra)** for determining a mandate of burdening the plaintiff to necessarily move an application with the suit accompanying urgent application is misplaced.

23. The observation by Hon'ble Supreme Court in **Yamini Manohar (Supra)** are suggesting to the courts to keep their eyes open to the "**substance of plea**" in application of urgent nature so as parties are not allowed to avoid the compliance of mandatory provision of **Section 12 A**, while filing a suit in domain of commercial court. The aforementioned law neither indicates nor mandates a prerequisite of an application of U/s 12A for waiver to be accompanied with the suit, which in the first instance itself is filed with an application of seeking urgent relief.

24. By moving an application of urgent nature, the rigors of



the provisions of **section 12 A** are **prima facie** revealed. Beyond above, whether the application discloses merit and or its filed only as “**artificially created facade of urgency**” as claimed by defendant, could only be decided after the court imparts its view and renders an order on the merits of the application seeking urgent relief.

25. The court can not exhaust its opinion on merits without according an opportunity to defendant on such an application which opportunity apparently is intended by present defendant in this case as well, in reply to application of waiver itself, and strengthens the observation that the defendant deserves equal hearing while the determination on merits of urgent application are made. It is only on arriving at the decision that strength of plaint in terms of **Yamini Manohar (Supra)** can be assessed which observation is to be read in conjunction with the provisions of **Order VII Rule 1 CPC**.

26. In view of above, the answer to the first poser presented by defendant that the court must first make its decision known on waiver application **U/s 12A** by mandating the plaintiff in all cases to move an application of such nature with plaint is decided against the defendant. ...

... 31. In view of discussion above it is summarized that there is no procedure mandating the plaintiff to file an application for waiver **U/s 12A**. There is no predetermined stage for decision of such applications either, and or, if such application is made to compute limitation/from the date of determination of the application. The above plea as it is devoid of any merits in view of the observation made by **M/s SCG Contracts India Pvt. Ltd. Vs. K. S. Chamankar Infrastructure Pvt. Ltd. & Ors., (2019) 12 SCC 210**, which are taken note below:

“The Commercial Courts. Commercial Division and Commercial Appellate Division of Hish Courts Act. 2015 came into force on 23.10.2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order V, Rule 1, sub-rule (1), for the second proviso, the following



proviso was substituted:

“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other days, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty 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.” Equally, in Order VIII Rule 1, a new proviso was substituted as follows:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty 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 was re-emphasized by re-inserting yet another proviso in Order VIII Rule 10 CPC, which reads as under: -

“Procedure when party fails to present written statement called for by Court. - Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgment a decree shall be drawn up.

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.” 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.

*32. In circumstances as above, as defendant despite opportunity and service on 25.10.2025 has not comply with the statutory mandate of law. **The opportunity to file the Written Statement is now being closed.***

6. After going through the impugned order and the record, this court does not find any ground for the grant of stay of the impugned order passed by the trial court. Accordingly, the application stands disposed of.

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7. Reply filed on behalf of the respondents is on record.

8. Learned counsel for the petitioner submits that he does not wish to file the rejoinder to the present petition.

9. List on 09th October, 2026

RAJNEESH KUMAR GUPTA, J

MAY 22, 2026/nd/isk