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

+ **CM(M) 2032/2024**

MUNICIPAL CORPORATION OF DELHI Petitioner

Through: Mr. Sanjeev Sagar, St. Counsel for
MCD with Ms. Nazia Parveen and
Mr. Shubham Kashyap, Advs.

versus

METRRO WASTE HANDLING PVT LTD Respondent

Through: Ms. Nidhi Mohan Parashar, Mr. Sarad
Kumar and Mr. Keshav Mann, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **04.03.2024**

CM APPL. 13448/2024(exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 2032/2024

3. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 15.12.2023 passed by the learned District Judge (Commercial Court), Central district, Tis Hazari Courts, New Delhi, in CS(COMM.) No.4887/2021 titled as “*Metro Waste Handling Private Limited vs. Municipal Corporation of Delhi*”, whereby the learned Trial Court partly dismissed the application under Order IX Rule 7 Civil Procedure Code (“CPC”) read with Section 5 of the Limitation Act by not permitting the petitioner to file written statement despite setting aside the



exparte order.

4. Ms. Nidhi Mohan Parashar, learned counsel for the respondent appears on advance notice and accepts notice.

5. It is submitted that the respondent instituted a suit for recovery against the petitioner herein (erstwhile SDMC) in November, 2019. Vide order dated 22.11.2021 the learned Trial Court directed issuance of notice along with the documents to be served upon the petitioner. On 22.05.2022 the SDMC, EDMC and NDMC merged and unified MCD was notified. Vide order dated 26.05.2022 the learned Trial Court noted that the service on the petitioner was complete and on the non-appearance, the court proceeded against the erstwhile SDMC ex-parte. It is further submitted that vide order dated 04.08.2023, the learned Trial Court observed that the petitioner herein was not appearing in the matter post amendment of the suit and hence accordingly learned Trial Court issued notice to the petitioner for appearing before it .

6. The following observations have been made by the learned Trial Court vide impugned order dated 15.12.2023:

“It is settled law that an ex-parte defendant can join the proceedings from the date he appears in the court. The defendant however, in this case, wants to recall the order dated 26.05.2022 and to contest the case on merits. Admittedly, the erstwhile defendant SDMC was served on 13.01.2022 and the period of 120 days which is maximum available to file the WS expired before 26.05.2022 i.e. on 13.05.2022. For no reason the time for filing the WS can be extended beyond 120 days from the date of service. The unification of SDMC, EDMC and NDMC into MCD took place on 18.05.2022 i.e. after expiry of 120 days from the date of service. For no reason defendant can be permitted to file the WS. Record further shows that the plaintiff filed an application for substitution of defendant from SDMC to MCD



because of unification which was allowed on 26.08.2022 and thereafter, PW-1 was examined on 04.11.2022. No notice or court notice was issued to MCD after the change of the name of the defendant. For this reason, the ex-parte proceedings dated 26.05.2022 should be recalled with right to the defendant to cross-examine PW-1 on the limited legal aspects and to challenge the veracity of the documents filed by the plaintiff. The defendant cannot be permitted to file WS or cannot be permitted to lead evidence in the absence of WS. The order dated 26.05.2022 is hereby recalled, however, subject to cost of Rs. 5,000/- payable to the plaintiff since the application is highly belated being filed in October 2023. Subject to payment of this cost, put up for cross-examination of PW-1 on 09.02.2024. The application stands disposed of.”

7. It is further submitted on behalf of the petitioner that on 16.10.2023, the petitioner filed an application for setting aside the ex-parte order dated 26.05.2023 along with the prayer of condonation of delay and permission to file written statement. Subsequently, the learned Trial Court passed the impugned order

8. It is submitted that in these circumstances, after a detailed response made on behalf of the petitioner herein the exparte order passed on 26.05.2022 were not set aside and the petitioner was granted only an opportunity to join the subsequent proceedings of the trial without setting aside the exparte order dated 26.05.2022. He was granted an opportunity vide order dated 15.12.2023 to join the subsequent proceedings of the trial but his exparte order dated 26.05.2022 was not set aside thereby the petitioner lost his right to file the written statement in the present case.

9. Learned counsel for respondent submits that the reply shall be filed within four weeks with an advance copy to the opposite side. Rejoinder thereto, if any, be filed within one week thereafter.



10. List for hearing on 07.08.2024.

CM APPL. 13447/2024—stay

11. Learned counsel for petitioner submits that the matter is listed before the learned Trial Court on 08.03.2024 for cross-examination of the PW-1/plaintiffs witness which may be stayed as limited right of cross-examination with respect to only legal issue has been granted by the learned Trial Court.

12. In these circumstances, the proceedings of the learned Trial Court are stayed till the next date of hearing i.e. 07.08.2024.

SHALINDER KAUR, J.

MARCH 04, 2024

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