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

+ **CS(COMM) 580/2021**

LARSEN AND TOUBRO LIMITED

..... Plaintiff

Through: Mr. Manu Seshadri with Mr. Aveak
Ganguly, Adv (through VC)

versus

NBCC INDIA LIMITED AND ANR

..... Defendants

Through: Mr. Krishan Kumar with Mr Kartik
Sarsoonina and Mr. Nitin Pal, Advs for
D1(through VC).
Dr Subhash C. Gupta, Adv for D2
(through VC).

CORAM:

MS. VANDANA JAIN (DHJS) JOINT REGISTRAR(JUDICIAL)

ORDER

% **21.05.2022**

Written statement not filed on behalf of D-1 and D-2. However,
learned counsel for plaintiff submits that he has received the written
statement from defendant No.2.

**IA No. 3622/2022 (Under Order XI Rule 2 r/w s 151 CPC filed by
Plaintiff for leave to deliver interrogatories qua D-2)**

**IA No. 3639/2022 (Under Order XI Rule 2 r/w s 151 CPC filed by
Plaintiff for leave to deliver interrogatories qua D-1)**

Reply to Interrogatories e-filed on behalf of D-2 to its
respective IA.

Reply to IAs not filed on behalf of D-1 to its IA.

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Learned counsel for plaintiff has pressed his applications for interrogatories. However, learned counsel for defendant No.1 has opposed the same stating that his written statement is not on record and he will be placing the same within the time prescribed as per the orders dated 23.03.2020, 08.03.2021, 27.09.2021 & 10.01.2022 of Hon'ble Supreme Court in *Suo Moto WP (C) No. 3/2020*. He further submits that without expiry of his statutory period prescribed for filing of written statement as per aforesaid judgement, the applications for interrogatories cannot be heard in view of Chapter VIII Rule 1 of Delhi High Court (Original Side) Rules, 2018 (hereinafter referred to as DHC Rules) wherein it is stated that the plaintiff shall be entitled to file the application for interrogatories within 15 days from the receipt of the written statement from the defendant.

On the other hand, learned counsel for plaintiff has brought my attention towards Chapter-IV 1 (f) of Delhi High Court (Original Side), Rules, 2018 wherein it has been provided that the application for interrogatories can be filed by the plaintiff alongwith the plaint and therefore, there is no requirement of a waiting for the defendant to file the written statement. He further submits that in any case, the time to file the written statement has already expired and judgement *Suo Motu (Supra)* relied upon by learned counsel for defendant is not applicable to the case in hand and he is in the process of moving an application under Order VIII Rule 10 CPC which is going to be listed soon. He has further relied upon three judgements titled as :-

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1. **Anjulika Vinod Dewan vs Smt Vijay Laxmi Chauhan & Ors** in CS (OS) 61/2006 dated 14.03.2008.
2. **Canara Bank vs Rajiv Tyagi & Associates & Anr** in CM(M) No. 667/2009 dated 12.01.2010.
3. **Sonia Senroy vs Amit Senroy** in [1998 (3) Mh.L.J 726] dated 22.04.1998.

Learned counsels for plaintiff and defendant No.2 have been heard on the merits of the application simultaneously.

I have carefully perused the record.

Before coming to the merits of the application, it is imperative to consider the submissions of learned counsel for parties with respect to the stage of filing and entertaining the application seeking leave to deliver the interrogatories.

Learned counsel for defendant No.1 has relied upon Chapter VIII Rule 1 of DHC Rules in order to say that the instant applications cannot be taken up before filing of written statement by the defendants/ time to file written statement has expired. In order to deal with the contentions of learned counsel for defendant No.1, it is necessary to reproduce the said *Rule 1 of Chapter VIII*:-

“ In addition to the right of the plaintiff to file applications as provided in Rule 1 (f) of Chapter IV of these Rules, The plaintiff shall also be entitled to file such application within 15 days of receipt of written statement from the defendant. No such application by the plaintiff, except with leave of Court, shall be entertained thereafter.”

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Since the aforesaid Rule makes a reference to *Chapter IV Rule 1 (f) of DHC Rules* which is also relied upon by learned counsel for plaintiff, it is also being reproduced hereinunder:-

“ Along with the plaint, the plaintiff shall also be entitled to file applications for:-

- (i) Interrogatories for examination of the defendant together with proposed interrogatories;*
- (ii) discovery; and*
- (iii) inspection of documents. ”*

The careful and combined reading of both the rules makes it amply clear that the plaintiff has an absolute right to file the application for interrogatories alongwith the plaint. In addition to this right, the plaintiff has been given an additional entitlement to file such application within 15 days from the filing of written statement by the defendant. Learned counsel for defendant No.1 has relied on only a part of Chapter VIII Rule 1 which cannot be allowed.

Learned counsel for plaintiff has relied upon *Sonia Senroy (Supra)* wherein also this issue has been dealt with. The relevant extract of the said judgment is reproduced hereinunder:-

“12. XXXXX The plaintiff under Order XI, Rule 1 of C.R Code can deliver relevant interrogatories to the defendant even before the filing of the Written Statement. In fact, the defendant, as a rule, is not allowed to deliver interrogatories to the plaintiff before he has filed Written Statement. It is not the other way round.

13. It is also a settled legal position that as a general rule, interrogatories are to be allowed, whenever the answer to them will serve either to maintain the case of the

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party administering them or to destroy the case of the adversary. The power to serve interrogatories is not meant to be confined within narrow technical limits. It should be used liberally, whenever it can shorten litigation and serve the interest of justice.

14. In the present case at hand, since the defendant has not filed any Written Statement, the question of destroying defendant's case does not arise. However, the plaintiff has to prove her case and has to obtain admissions from the defendant to facilitate the proof of her own case.”

In view of the backdrop of discussion made above, it no more remains unsettled that the plaintiff's applications for seeking leave to deliver interrogatories to the defendants are maintainable even before the filing of the written statements by them. Therefore, at this stage, there is no requirement of going into the question of deciding whether the period for filing the written statement in view of Hon'ble Supreme Court's judgment has expired or not. Same shall be dealt with as and when this issue comes up for consideration.

The reply to the respective application has not been filed by defendant No. 1. The perusal of record shows that this application was taken up for the first time alongwith the similar application qua defendant No.2 on 07.03.2022, wherein the learned counsel for both the defendants had appeared and sought time to file reply. Matter was posted to 21.03.2022 wherein the time was again granted to both the defendants to file the reply at their request. On 24.03.2022, the Hon'ble Court again granted three weeks time to file the reply to both the

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defendants to these IAs. Though, the reply was filed by defendant No.2. However, no reply to the IA has been filed by defendant No.1 till date. As far as this reply is concerned, the judgment of Hon'ble Supreme Court *Suo Moto (supra)* is not applicable as the applications were filed on 03.03.2022. Since several opportunities have already been granted to file the reply, and no application seeking enlargement of time has been moved, therefore, no further indulgence is required. The applications are straightway taken up for disposal.

Now, coming to the application qua defendant No.1 on merits, the case of the plaintiff set out in the plaint is that the plaintiff has filed the captioned suit for breach of contract between the parties and for payment of the dues. The plaintiff and defendant No.1 had entered into three separate contracts for the work of construction of a new medical college and hospital and allied buildings and services to be owned and operated by defendant No.2-ESIC at Coimbatore. It is averred that sites have been successfully handed over to the owner i.e. defendant No.2 however, full payment has not been made by defendant No.1-NBCC after the final bill was raised. By way of this application, the plaintiff has sought leave to deliver the following interrogatories set out by the plaintiff and an order directing defendant No.1 to answer the same.

- “1. *Please provide the details of all bills (including Running Account Bills, Escalation Bills and Final Bills) submitted by Defendant No.1 to Defendant No.2 for work done in respect of Contracts dated 29.10.2009, 09.06.2010, 30.05.2012 entered between the Plaintiff and Defendant No.1.*



2. *Please furnish complete details of all payments that have been received by Defendant No.1 from Defendant No.2 in relation to Contracts dated 29.10.2009, 09.06.2010, 30.05.2012 entered between the Plaintiff and Defendant No.1.*
3. *Please reply as to whether payment for construction of the ESI Medical College, Coimbatore has been made on lumpsum basis by Defendant No.2 to Defendant No.1 or against separate heads of cost contained under respective Final Bill(s) dated 27.06.2018 relating to Contracts dated 29.10.2009, 09.06.2010, 30.05.2012 entered between the Plaintiff and Defendant No.1.”*

Learned counsel for plaintiff has argued that defendant No.2 was not a party to the packages but it was the ultimate beneficiary. It is submitted that since there is no back to back contract between the parties, the controversy can only be cut short if the aforesaid interrogatories are answered.

On the other hand, learned counsel for defendant No.1 refused to comment on the merit of the application and only took the objection of not filing the written statement, which has already been dealt in the preceding paragraphs.

The first interrogatory which is set out is with respect to the details of the bills submitted by defendant No.1 to defendant No.2 for work done in respect of the three packages.

The second is with respect to the payment details received by defendant No.1 from plaintiff in respect to these three packages. The third is with respect to the manner in which payment was made,



whether it was on lumpsum basis or against separate heads of costs. If against separate heads, then the details thereof.

While addressing arguments, learned counsel for plaintiff has referred to a letter dated 08.09.2020 written by defendant No.1 to the plaintiff where in Annexure-1, against Sl No.2, 6, 7, 8 and further in Annexure-2, against Sl No.2, 5, 6, 7 and thereafter in Annexure-3, against Sl No.2, 5, 6, 7, it is mentioned that the claims are pending with ESIC and only on getting approval, the same shall be considered. The reply to the application seeking leave to deliver interrogatories upon defendant No.2/ESIC has been filed wherein it is mentioned that the total payment released to NBCC/defendant No.1 is Rs 4,88.38 crores whereas the present suit has been filed for a much lesser amount i.e. Rs. 2,55,94,05,316/- (2.55 crores). While answering the application, defendant No.2/ ESIC has stated that the consolidated bills were received and the consolidated payments was made. Therefore, it is difficult to ascertain the truth. There is no doubt that the interrogatories herein are confined to the facts which are relevant to be the matters in question in the suit and are definitely not in the nature of making roving inquiries from the defendants. They are necessary to shorten the litigation. It is also worthwhile to mention here that the plaintiff does not have any other mode to access these documents on which his entire case rests. Hence, application qua defendant No.1 stands allowed. Defendant No.1 is directed to answer these interrogatories strictly in accordance with law as mentioned in Order XI Rule 8 & 9, however, keeping in view that the documents

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are voluminous in nature, four weeks time is granted to answer the same.

As far as the application qua defendant No.2 is concerned, the reply has been filed by defendant No.2 however, defendant No.2 has not answered the same sufficiently, therefore, one more opportunity is granted to defendant No.2 to strictly comply with the provisions of law with respect to answering the interrogatories within four weeks from today.

Both the IAs stands disposed off accordingly.

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Put up for consideration of IA No. 4595/2022 on 04.08.2022.

**VANDANA JAIN (DHJS)
JOINT REGISTRAR(JUDICIAL)**

**MAY 21, 2022
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