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

+ **CS(OS) 664/2022**

PRIYANKA SINGH

.....Plaintiff

Through: Mr. Nidhi Mohan Parashar
and Mr. Anand Chichra,
Advts.

versus

GURSAMARJIT SINGH AND ORS.Defendants

Through: Mr. Naveen Kumar, Adv.
for D-2 and 4 to 7
Mr. Vivek Singh and Ms.
Ritika Dwivedi, Advts. for
D-8
Mr. Nidhi Mohan Parashar
and Mr. Anand Chichra,
Advts.

CORAM:

**JOINT REGISTRAR (JUDICIAL) MS. SHUCHI
LALER (DHJS)**

ORDER

15.02.2025

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I.A. No. 12502/2023 (u/O VIII Rule I CPC)

1. The matter is listed for orders on the captioned IA, whereby, defendant no.8 is seeking condonation of delay of 62 days in filing the written statement.

2. In the present application, defendant no. 8 has averred that the plaintiff has not complied with Section 12A of Commercial Courts Act, 2015 and her application seeking exemption from pre-institution mediation and settlement bearing IA No. 15150/2021 is still pending and till the decision of the aforesaid IA, the limitation to file written statement does not start. It is also averred that unless the plaintiff exhausts the remedy of pre-institution



mediation, the present suit cannot proceed and there is no waiver of statutory provision of Section 12A, hence, the occasion for filing of written statement does not arise.

2.1 Defendant no.8 claims that he has not been served with the copy of the suit till now. He avers that only the copy of IPA No. 3/2021 dated 16.11.2021 was served by plaintiff's counsel through email dated 02.12.2022. Defendant no.8 alleges that as the copy of the plaint was not supplied to him, he is under no obligation to file the written statement.

2.2 It is urged that the plaint is defective as the plaintiff failed to mention the amount of court fee paid by her, hence, she failed to comply with mandatory requirement of Order VII Rule 1 CPC. Even the details of court fees/copy of court fees paid by the plaintiff were not supplied to the defendant no.8, hence, it is alleged that an incomplete plaint has been provided to defendant no.8. Accordingly, defendant no. 8 prays that the delay in filing the written statement be condoned.

3. The plaintiff, in her reply, has stated that the averments made in the captioned IA by defendant no.8 are in the nature of objections under Order VII Rule 11 CPC and these objections can have no relevance to an application preferred under Order VIII CPC. It is stated that defendant no.8 has filed the written statement after a lapse of 188 days from the date of his service, hence, this inordinate delay cannot be condoned.

3.1 The plaintiff claims that IA No. 15150/2021 under Section 12A of Commercial Courts Act, 2015 was filed by the plaintiff along with the suit, however, vide order dated



20.10.2022, the Hon'ble Court directed the instant suit to be registered as an ordinary civil suit. Accordingly, IA No. 15150/2021 became infructuous and was dismissed as withdrawn vide order dated 12.12.2023, no benefit accrued in favour of defendant no.8 since the present suit was never registered as commercial suit. Even otherwise, the plaintiff avers that as urgent relief was contemplated, no pre-litigation mediation was mandatory under Section 12A of Commercial Courts Act, 2015.

3.2 The plaintiff urges that though defendant no.8 alleges non-service of copy of suit, no request seeking service afresh from the plaintiff was made by defendant no.8 despite appearing before this court since 06.01.2023. Moreover defendant no.8 had filed application under Order I Rule 10 CPC bearing IA No. 412/2023 seeking his deletion, which could not have been possible without receipt of copy of suit. Remaining contents of the application have been denied and its dismissal has been prayed for.

4. Defendant no.8 has preferred to file rejoinder, wherein, he has reiterated the plea of non-supply of copy of plaint of CS (OS) 664/2022 and mere supply of I.P.A. No. 3/2021. He has further pleaded that Court fees was not served and there is non-compliance of mandatory requirement of pre-institution mediation under Section 12A of Commercial Courts Act, 2015. Defendant no.8 has denied that there is a delay of 158 days in filing of the written statement and claims that the plaint served upon him was defective, hence, the limitation for filing of written statement has not commenced.



5. Rival submissions advanced at bar were heard at length. Record perused.

6. It is an admitted case of the parties and it is also borne out from the record that defendant no.8 was served on 02.12.2022. Learned counsel for defendant no.8 entered appearance in the present matter on 07.12.2022, thereafter application under Order I Rule 10 CPC seeking his deletion was filed by defendant no.8 on 19.12.2022 and written statement was filed on 05.05.2023 vide diary no.777121/2023. Undisputedly, the written statement has been filed by defendant no.8 beyond 120 days from the date of his service.

7. By virtue of captioned IA, defendant no.8 is not seeking condonation of delay on any ground whatsoever but the plea put forth by defendant no.8 is that he has filed the written statement by way of an abundant caution, though the limitation for filing of written statement has not yet commenced, due to the following reasons:-

8. Non compliance of Section 12A of Commercial Courts Act, 2015

8.1 Learned counsel for defendant no.8 vehemently urged that the application for exemption from pre institution mediation and settlement filed by the plaintiff under Section 12A of Commercial Courts Act, 2015 bearing IA No. 15150/2021 was pending, of which notice was issued on 20.10.2022, so the time period for filing of written statement cannot be said to have started till the aforesaid application is disposed off. He had placed strong reliance on the judgment of Hon'ble Supreme Court in ***“Patil Automation Vs. Rakheja Engineers 2022 (10)***



SCC I” where in Para no.49, it was observed that the right to institute the suit in a plaintiff, who does not contemplate urgent interim relief in a commercial matter under the Act, is clearly conditioned by fulfilment of certain conditions as provided in Section 12A.

8.2 A reading of Section 12A of Commercial Courts Act and the judgment of Patil Automation (supra) makes it apparent that a suit, wherein urgent interim relief is prayed for, is excluded from the rigors of Section 12A of Commercial Courts Act, 2015. (Reference may be made to the judgment of Chandra Kishore Chaurasia V/s R A Perfumery Works Pvt. Limited FAO (comm.) 128/2021 dated 27.10.2022)

8.3 In the instant case, the plaintiff did file an application u/O 39 Rule 1 & 2 read with Order 38 Rule 5 CPC along with the suit bearing I.A.No. 15149/2021, hence, Section 12A of Commercial Courts Act 2015 is inapplicable. Even otherwise, on 20.10.2022 learned counsel for plaintiff had submitted before the Hon’ble Court that the present suit be registered as a regular suit. Vide order dated 20.10.2022, the Hon’ble Court directed that the present suit be registered as per rules.

8.4 The instant suit was registered as a regular civil suit and as urgent interim relief was sought by the plaintiff, she was not required to exhaust the remedy of pre-institution mediation as per the mandate of Section 12A of Commercial Courts Act, 2015. Thus, the objection of defendant no. 8 regarding non compliance of Section 12A of Commercial Courts Act, 2015 is without any merits and is dismissed.



9. Defective service as copy of plaint was not supplied.

9.1 The main emphasis of learned counsel for defendant no. 8 was on the point that till date, defendant no. 8 has not been served with the copy of the plaint of CS(OS) 664/2022 and what was supplied to him was only copy of IPA No. 3 of 2021. He submitted that service cannot be said to be complete unless plaint of CS(OS) 664/2022 is supplied to him and defendant no. 8 is under no obligation to file the written statement. He had drawn the attention of the Court to Order V Rule 2 CPC and to the judgment of ***Sunil Alagh V/s Shivraj Puri & Anr. [2017 SCC online Del. 12368]***.

9.2 At this junction, it would be relevant to reproduce order dated. 27.09.2024 of this Court, which reads as under:

“2. In para no.5 of the captioned IA, defendant no.8 has averred that he has not been served with the copy of the suit till now and has only been served with the copy of IPA Number 3 of 2021 dated 16.11.2021 vide email dated 02.12.2022 by the plaintiffs counsel.

3. Learned counsel for plaintiff submits that the plaintiff had initially filed an application u/O XXXIII Rule 1 CPC along with the plaint, hence the present matter was registered as IPA No. 3 of 2021, which was subsequently directed to be registered as a regular suit vide order dated 20.10.2022 by the Hon'ble Court.

4. Learned counsel for plaintiff submits that he had supplied to defendant no.8 the complete paper book, however, in the title thereon, IPA of 2021 was mentioned instead of CS (OS) 664/2022.

5. A question has been put to learned counsel for defendant no.8 whether he was supplied with the copy of the plaint as mentioned at serial no.6 of master Index Volume I and of remaining documents as mentioned in Index number I to IV dated 16.11.2021.

6. Learned counsel for defendant no.8 submits that he has received the entire set of documents as mentioned in Index no. I to IV dated 16.11.2021 including the document mentioned at serial no.6 of Volume I master



Index, however, in the title, it was mentioned as IPA No. of 2021. He further submits that as in the title, only IPA No. of 2021 was mentioned, hence, he has not been supplied with the complete paper book.

7. Learned counsel for defendant no.8 has been asked whether any request was made by him to learned counsel for the plaintiff seeking clarification regarding supply of IPA No. of 2021 or for supply of complete paper book from the date of service i.e. 02.12.2022 till date through email or through any other mode, to which he submits that no such request has been made except the said averment being made in the captioned IA.”

9.3 A reading of aforesaid order makes it apparent that complete paper book was supplied to defendant no. 8 and his limited grievance is that on the title of the plaint, IPA number was mentioned instead of CS(OS) 664/2022.

9.4 Subsequent to service of summons on 02.12.2022, when learned counsel for defendant no. 8 entered appearance before this Court on 07.12.2022, his limited doubt about present being a civil suit and not an insolvency petition must have faded away. If not on 02.12.2022 (i.e. the date of service of summons) on 06.01.2023, defendant no. 8, who appeared through same counsel, was put to unequivocal notice that he must file written statement as per the mandate of law.

9.5 It even transpires from the record that defendant no. 8, who was served on 02.12.2022, drafted the application u/O 1 Rule 10 CPC, seeking his deletion, without any delay, just on the very next day i.e. 03.12.2022. The application u/O I rule 10 CPC bearing IA No. 412/2023 was filed by defendant no. 8 on 19.12.2022 i.e. within 17 days from the date of his service.

9.6 Had defendant no. 8 not received the complete paper book or had any doubt about the nature of claim he had to answer, he could not have drafted the application u/O I



Rule 10 CPC (IA No. 412/2023) on the very next date of the service of summons upon him. The expeditious filing of IA No. 412/2023 makes it apparent that defendant no. 8 had full knowledge of the case instituted against him and was well aware that he had to answer the plaint.

9.7 This plea of non supply of documents bearing title of CS(OS) 664/2022 seems to be an afterthought, which was crafted only when defendant no. 8 realized his mistake of non-filing of written statement within stipulation period.

9.8 With due respect, the judgment of Sunil Alagh (supra) is of no help to defendant no. 8 as in that case, it was recorded in the order dated 10.04.2017 of Learned Joint Registrar that copy of documents were supplied on 10.04.2017. In the light of order dated 10.04.2017, the Hon'ble Court observed that the period of 120 days for filing of written statement will, therefore, necessarily commence only on 10.04.2017 and not earlier.

9.9 Whereas, in the present case, defendant no. 8 never made any request for supply of incomplete or correct documents to him before the Court or to learned counsel for petitioner. If defendant no. 8 had not received the complete paper book or had any doubt about the nature of case he had to answer, he should have approached this Court or learned counsel for petitioner at the earliest so that his written statement would have been filed within 120 days. (Reliance is placed upon the judgments **N.P.M. Distributors & Ors V/s Clide International Pvt. Ltd. & Ors.)** **Manu/DE/7888/2023; National Insurance Company Pvt Ltd. V/s M/s National Building Construction India Pvt. Ltd. & Ors. FAO(OS) COMM**



281/2019 dated 31.10.2019; Jatav Sudha Samiti V/s Sushma Mittal CM(M) 23374/2024 dated 22.04.2024 of Hon'ble Delhi High Court). After a lapse of more than 120 days, such a plea cannot be entertained.

9.10 In view of aforesaid reasons, the plea of non supply of copy of plaint remain unsubstantiated on record. Clearly, the defendant had no doubt that the Hon'ble Court had found the suit to be properly instituted and he was required to file the written statement in a time bound manner, but he failed to do so.

10. Non supply of Court Fees.

10.1 Learned counsel for defendant no. 8 submitted that though, the Hon'ble Court, vide order dated 20.10.2022, directed the plaintiff to file entire Court fees, the copy of court fees has not been supplied to him.

10.2 When requested, learned counsel for defendant no. 8 could not highlight any provision which stipulates mandatory supply of copy of Court fees to defendant. It is well settled proposition of law that any dispute as to the Court fees is to be decided solely on the basis of averments made in the plaint. Court fees, even if deficient, would not have created any hurdle in preparation of written statement. Defendant no. 8 could have raised that objection by filing an application under Order 7 Rule 11 CPC. Hon'ble Apex Court in the case of **SCG Corporates (India) Pvt. Limited Vs. K. S Chamankar Infrastructure Pvt.Ltd. (2019) 12 SCC 210** held that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file written statement.



10.3 It was not incumbent upon the plaintiff to supply the copy of Court fees and an objection as to deficient Court fees, if any, cannot, ipso facto, extend the prescribed period for filing of written statement. Hence, even this contention of learned counsel for defendant no. 8 is devoid of merits & is accordingly rejected.

11. During the course of arguments, learned counsel for defendant no. 8 raised two additional pleas, which are, as under:-

12 **Filing of additional documents by plaintiff would extend the period of limitation for written statement.**

12.1 Learned counsel for defendant no. 8 contended that after issuance of summons, plaintiff filed additional documents on 24.03.2023 and 09.01.2024, so, the time to file written statement has not commenced. Reference was also made to the judgment of *ITD Cementation India Pvt. Ltd. V/s Indian Oil Corporation Limited. CS(COMM) 844/2017 dated 06.10.2023 of Hon'ble Delhi High Court.*

12.2 With due respect, the aforesaid judgement does not apply to the facts of the present case as in that case the additional documents were filed after obtaining leave of the Hon'ble Court. In the present case, no such leave has been obtained with respect to the two documents filed on 24.03.2023 and 09.01.2024, so, they cannot be construed to be on record at this stage, consequently, there can be no extension of time to file the written statement.

13. **Pendency of defendant no. 8's application u/O 1 Rule 10 CPC.**

13.1 It was argued that the defendant no. 8 has filed an application u/o 1 Rule 10 CPC bearing IA No. 412/2023



seeking his deletion, upon which arguments have been heard and as an abundant caution, he has also filed the written statement.

13.2 Suffice is to say that, filing of application under Order 1 Rule 10(2) CPC, would not, in any manner absolve defendant no. 8 from his legal obligation to file the written statement within prescribed period.

14. Keeping in view the foregoing reasons and discussion, the court is of the opinion that defendant no. 8 was supplied with the complete and correct paper-book on 02.12.2022. The written statement, clearly, was filed beyond the maximum prescribed period of 120 days, hence the delay cannot be condoned. [Reference may be made to judgment of **Ms Charu Agarwal V/s Alok Kalia V/s Delhi Gymkhana Club & Ors. CS(OS) 171/2022 dated 08.09.2023**). The right of defendant no. 8 to file written statement stands forfeited. The captioned IA is dismissed.

15. Re-notify the matter for consideration of pending IAs on 28.03.2025.

**SHUCHI LALER (DHJS),
JOINT REGISTRAR (JUDICIAL)
FEBRUARY 15, 2025/cd**

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