



\$~22

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

+ **CS(COMM) 136/2022**

SWASTIK ENERCON PROJECTS LIMITED Plaintiff

Through: Mr. Sanjay Jain & Ms. Anindita Saha
Debabhuti, Advs (8860635799)
(len.corpn@gmail.com)

versus

HARYANA STEEL TRADING CORPORATION Defendant

Through: Mr. Sameer Dewan & Mr. Prabhat
Ranjan Tiwari, Adv (D/11714/2022)
(9810134864) (sameerdewan123@
rediffmail.com)

CORAM:

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

ORDER

% **08.12.2022**

IA No. 16338/2022(U/O 8 Rule 1 CPC filed by defendant for condonation of delay of 4 days in filing written statement)

Vide separate order, I proceed to dispose off the IA No. 16338/2022 (u/O VIII Rule 1 CPC filed by defendant for seeking condonation of delay).

Learned counsel for defendant has argued that complete paper book was supplied to defendant by way of email on 02.06.2022 at 07:45 PM and he had filed the emails in order to support his averments. Learned counsel has further argued that he could not file the written statement within thirty days from 02.06.2022 as his office was closed due to vacations from 09.06.2022 to 29.06.2022 and therefore, he took a week's time to prepare the written statement.

CS(COMM) 136/2022

page1 of 4



The written statement was finally prepared on 01.07.2022. However, counsel for plaintiff got fever and his office was closed from 02.07.2022 which was resumed again on 07.07.2022. He has argued that without causing any delay, he filed the written statement on the very same date i.e. on 07.07.2022. Learned counsel for defendant has further argued that there is a delay of four days in filing the written statement and same be condoned.

Learned counsel for plaintiff has vehemently opposed the application by stating that he disputes the date of service of summons upon defendant. He has also filed the affidavit of service in this regard.

Learned counsel for plaintiff has drawn my attention towards service of the defendant through courier on 10.05.2022. He has further drawn my attention towards email dated 09.05.2022 which is sent to the defendant. Learned counsel has argued that the reasons given in the application for delay in filing the written statement are fallacious and cannot be termed as reasonable so as to take the written statement on record. He has relied upon the judgment of **3M Company vs Mr Vikas Sinha & Anr** in **CS (COMM) 144/2019 dated 05.07.2022**, in support of his averments.

I have heard the arguments of learned counsel for parties and have perused the record carefully.

Record shows that summons were directed to be served upon defendant by all permissible modes. Affidavit of service has been placed on record which clearly shows that summons sent by way of **CS(COMM) 136/2022**

page 2 of 4



courier (DTDC) which is an approved courier service and same were duly served upon defendant on 10.05.2022. The summons were also sent through email 09.05.2022.

Learned counsel for defendant has remained silent with respect to service of the defendant through courier (DTDC). Even in the emails which have been placed on record by defendant it can be, though learned counsel for plaintiff had again supplied the paper book to the defendant however, it is clearly mentioned in that emails that “service has already been effected on 09.05.2022 by way of email”. Therefore, there is no doubt that defendant was duly served on 10.05.2022 through courier.

The statutory period of thirty days to file the written statement expired on 09.06.2022 whereas written statement was filed on 07.07.2022. Learned counsel for defendant had putforth his sickness as well as vacations as the grounds which caused delay in filing the written statement. The application is duly accompanied by affidavit of the partner of defendant firm.

As far as, the judgment of **3M Company (supra)** relied upon by learned counsel for plaintiff is concerned, the facts of the case are substantially different from the present case. In that case, written statement was filed on 19.08.2019, that is on 118th day from the date of service of summons. However, the same actually came on record (after the objections were removed) only on 20th November, 2019. The application seeking condonation of delay was placed on record on 21st November, 2019. In these circumstances, written statement was

CS(COMM) 136/2022 *page3 of 4*



not taken on record. However, in the present case, written statement has been filed after a delay of 28 days from the date of expiry of statutory period of 30 days from the date of service. The application for condonation of delay was also moved by defendant on 16.08.2022 that is within the period of 120 days, from the date of service of summons. Though delay has been caused, however, the delay is not such as would prejudice the plaintiff to an extent that defence of the defendant is thrown away at the threshold and defendant is not given an opportunity to contest the suit.

In my considered opinion, delay has been duly explained and therefore, written statement filed by defendant alongwith affidavit of admission/denial of documents is taken on record. IA stands allowed and disposed off accordingly.

CS(COMM) 136/2022

Replication to the written statement of defendant be filed by plaintiff in accordance with law.

Joint Document Schedule in terms of Rule 7 A of Chapter VII of The Delhi High Court (Original Side) Rules, 2018 be filed physically by plaintiff after getting it signed from defendant.

Documents, if e-filed be filed physically by parties so as to mark the exhibits.

Put up for marking of exhibits to the documents on 28.03.2023.

VANDANA JAIN (DHJS)
JOINT REGISTRAR(JUDICIAL)

DECEMBER 8, 2022/SK
CS(COMM) 136/2022

page 4 of 4