



\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 781/2018**
QUALITY BUILDCON PVT. LTD

.....Plaintiff

Through: Mr. Arvind Kumar Gupta, Adv.

versus

DELHI METRO RAIL CORPORATION & ANR

.....Defendants

Through: Mr. Ankur Gupta & Mr. Vishwajeet
Tyagi, Advs. for D-1. (Mobile
No.9811045013, 9810724907,
9810013352)
Ms. Rashi Maheshwari, Adv. for D-2

CORAM:
JOINT REGISTRAR (JUDICIAL) MS. JYOTI KLER (DHJS)

ORDER

%

09.02.2022

Court hearing convened via video conferencing on account of Covid-19

I.A.No.7142/2019 under Section 151 CPC filed on behalf of the defendant no.1 for condonation of delay in filing written statement

1. Arguments heard.
2. It is averred by the defendant no.1 that after receiving notice in the present suit, same was sent to the legal department of the defendant no.1 through proper channel. A meeting with the concerned department was thereafter arranged and process of



preparing the reply took some time. The summer vacation ensued and a request was made to the Hon'ble Court for granting more time for filing the written statement, after reopening of the Courts. The parties were referred to Mediation Centre, on request, after reopening, but matter could not be settled despite several rounds of mediation. Written statement was not filed during the period when the parties were negotiating a settlement. Once the settlement efforts were over, written statement was filed. It is averred that delay in filing the written statement was neither wilful nor deliberate and the same has been occasioned because the circumstances were beyond the control of the defendant no.1. It is accordingly prayed that delay of 97 days in filing the written statement may be condoned.

3. Reply to the application has been filed by the plaintiff wherein it is averred that the written statement has been filed much after the stipulated period of 120 days. It is averred that this is a commercial matter and delay beyond 120 days cannot be condoned. It is the case of the plaintiff that the defendant no.1 had appeared before the Hon'ble Court through counsel on 09/04/2018 and had accepted summons of the suit. The matter was referred to Mediation Centre on 10/07/2018 however there were also directions to complete the pleadings but defendant no.1 did not comply with the same. It is prayed that the application may be dismissed with exemplary cost.
4. Learned counsel for the defendant no.1, while relying upon the judgment of Hon'ble High Court of Delhi in '**Telefonaktiebolaget**



L.M. Ericsson Vs. Lava International Limited, 2015 SCC OnLine Del.13903, contended that the period taken by the parties for negotiating a compromise is to be excluded and if that time is excluded, the written statement filed by the defendant no.1 shall be within the prescribed statutory period. Learned counsel for the defendant no.1 referred to the following paragraphs of the aforesaid judgment:

- (1) *“The plaintiff has filed the suit for permanent injunction against the defendant seeking inter alia to restrain violation and infringement of its rights in its 8 patents along with damages, rendition of accounts, delivery up etc. in the month of March, 2015. The defendant appeared before Court on the first date itself. Time to file the written statement was granted for four weeks on 26th March, 2015.*
- (2) *The written statement along with counter claim was filed by the defendant on 28th July, 2015. However, written statement to the counter claim was filed by the plaintiff on 5th December, 2015. In fact, a notice in the counter claim was issued by this Court vide order dated 31st July, 2015 and a period of 8 weeks was given to the plaintiff to file its written statement. From 31st August, 2015 till 29th October, 2015 both the parties were negotiating settlement, it is only on 3rd November, 2015 the plaintiff informed the Court that both the parties have not been able to resolve the matter and the matter can proceed on merits. Thereafter, this Court directed the plaintiff to file its written statement before the next date of hearing and the matter was re-notified for 18th November, 2015. However, on 18th November, 2015 counsel for both the parties mentioned the matter and the same was re-notified for 7th December, 2015 (the plaintiff has filed its replication cum written statement on 5th December, 2015).*
- (3)....
- (4)....
- (5)....



(20) On 3rd November, 2015 counsel for the defendant pointed out that no written statement to the counter claim was filed and the following order was passed by the Court:

“Mr. Chandhiok, learned senior counsel appearing on behalf of the defendant, has made his submissions for some time in the interim application. During the course of hearing, Mr. Chandhiok has pointed out that the written statement to the counter claim has not been filed wherein the defendant have stated that the patents of subject matter are not standard essential patents. Counsel for the plaintiff states that the written statement could not be filed to the counter claim as the parties were negotiating for settlement. Let the same be filed on or before the next date. List on 18th November, 2015.”

(21) It is evident that from 31st August, 2015 till 29th October, 2015 undisputedly parties were trying to settle their dispute. Time of 59 days was spent on settlement talks which at the end of the day could not be materialized. Interim application is at the stage of conclusion of the arguments on behalf of the defendant. The advantage, if any, has gone in favour of the defendant as there is no ex-parte interim injunction in the present case. After having heard learned counsel for the parties, I am of the view that since the parties were trying to resolve their dispute amicably and that process has taken 59 days, the said period is to be excluded from the period provided in the Civil Procedure Code and Clause 4D(i) of Commercial Courts Ordinance.

(22) Even otherwise, it is a well settled principle of law that if parties are negotiating settlement during the pendency of a matter, then the Court will condone the delay in filing of written statement due to such settlement talks. This Court, in its decision in *Dr. Sukhdev Singh Gambhir v. Amrit Pal Singh & Ors.*, ILR (2003) I Delhi 577, inter alia held that:

"5. Having heard, counsel for the parties and taking into consideration the respective pleas urged before me, I am of the view that this is a case where the delay in filing of the written statement deserves to be condoned. Firstly it



is a suit for partition concerning family members where every endeavor should be made for amicable settlement. Even otherwise, the mandate under Section 89 effort ought to be made to settle the matter. Secondly, the defendant had already filed the written statement in the suit in District Court. Hence it could not be the situation that the defendant was delaying the case, but on account of the attempts at settlement written statement was not filed....."

5. Learned counsel for the plaintiff relied upon the judgment of the Hon'ble Apex Court in ***M/s SCG Contracts India Pvt Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors.*** (2019 SCC OnLine SC 226), Hon'ble Bombay High Court in ***'Axis Bank Limited Vs. Mira Gehlani & Ors.*** (2019 SCC OnLine Bom 358) & Hon'ble High Court of Delhi in ***'Oku Tech Private Limited Vs. Sangeet Agarwal'*** CS (OS) 3390/2015, and contended that the Court is not empowered to condone the delay beyond 120 days under any circumstances.
6. Learned counsel for the defendant no.1 submitted during rebuttal arguments that prior to appearing before the Hon'ble Court on 10/07/2018, the parties had decided to make a request for referring them to Mediation Centre and that is why period falling between 19/04/2018 to 10/07/2018 may also be excluded for computing the period for filing the written statement. It is submitted that the period for filing the written statement started to run only after the mediation had failed on 06/03/2019 and written statement was filed on 12/04/2019, within the permitted statutory period. It is contended by the learned counsel that none of the judgments relied



upon by the plaintiff deal with the question if the period spent by the parties for negotiating a settlement should be excluded in computing the mandatory period of 120 days, hence the said judgments are not relevant.

7. I have considered the rival contentions and perused the record.
8. It is a matter of record that the defendant no.1 was served with the summons of the suit on 09/04/2018 when counsel appearing on behalf of the defendant no.1 accepted the summons in the Court. The written statement was first filed on 12/04/2019 and finally on 07/05/2019 after removal of objections. The parties were referred to Mediation Centre on 10/07/2018 and mediation failed on 06/03/2019. There is no dispute between the parties qua these facts.
9. It is the settled law that in a commercial suit, delay beyond 120 days cannot be condoned under any circumstances. The judgment of Hon'ble High Court of Delhi relied upon by learned counsel for the defendant no.1 is not applicable to the facts of the present case, because the Hon'ble Court, while condoning the delay in *Telefonaktiebolaget (supra)*, also observed as below:-

23. *The present suit squarely falls under the said exemption and **this Court has the discretion to provide for extended timelines for completion of pleadings as per the prior statute.***

24. *The **prescribed period of 120 days' timeline will be applicable in cases filed subsequent to the notification of the Ordinance and the same is not applicable in the present case.***



10. It is evident that the delay in filing the written statement was condoned in *Telefonaktiebolaget (supra)* under the earlier statute i.e. under Order VIII Rule 1 CPC and not under the Commercial Courts Act, 2015. The present case was filed subsequent to the notification of the Commercial Courts Act, 2015, which does not provide for any exception to the mandatory period of 120 days. It is rather specifically provided that in case the written statement is not filed within 120 days, the defendant will forfeit its right to file the written statement.
11. The plea of mediation raised on behalf of the defendant no.1 is misconceived. There is no quarrel on the position that the period of 120 days provided for filing the written statement in a commercial suit is mandatory. The judgments relied upon by learned counsel for the plaintiff are applicable to the facts of the present case and these categorically lay down that no exception to the mandatory period of 120 days has been provided and the defendant cannot be permitted to file the written statement beyond the aforesaid statutory period. There is no provision under the Commercial Courts Act which provides for extension of time limit for filing the written statement on the ground that the parties were negotiating a settlement.
12. Considering the aforesaid reasons, the mandatory provision regarding filing of written statement within 120 days under the Commercial Courts Act, 2015 and the various pronouncements of Hon'ble Higher Courts, the delay in filing of written statement by the defendant no.1 cannot be condoned.



13.IA is therefore dismissed and stands disposed off.

CS(COMM) 781/2018

1. Plaintiff has not filed the replication qua defendant no.2.
2. Written statement and affidavit of admission/denial filed by the defendant no.1 cannot be taken on record.
3. Defendant no.2 has admitted two documents of the plaintiff.
4. No document has been filed by the defendant no.2.
5. The defendant no.1 shall be deemed to have admitted all the documents of the plaintiff in view of Chapter VII Rule 4 of Delhi High Court (Original Side) Rules, 2018.
6. Re-notify the matter for exhibiting the documents accordingly on **19th February, 2022 at 11:30am.**

FEBRUARY 9, 2022/nk

**JYOTI KLER (DHJS)
JOINT REGISTRAR (JUDICIAL)**

[Click here to check corrigendum, if any](#)