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

+ **CS(COMM) 1052/2018**

COSCO INTERNATIONAL PVT. LTD. Plaintiff

Through: Mr. Asheesh Jain with Mr. Amrit Singh, Advs.

versus

JAGAT SINGH DUGARDefendant

Through: None

CORAM:

JOINT REGISTRAR (JUDICIAL) MS. SURYA MALIK GROVER (DHJS)

ORDER

% **23.10.2020**

THROUGH VIDEO CONFERENCING

By virtue of this order, application under Order 8 Rule 1CPC moved by defendant is being disposed of.

It is stated in the application moved by defendant that summons for the present suit were received by the Defendant at Kolkata on 22.09.2018, after which defendant who is a septuagenarian and is not keeping best of health since 2009 engaged a counsel in Delhi and visited Sh. N.K.Jain, director of the Plaintiff Company to explore possibilities of an amicable settlement, which unfortunately failed. Further, on 16.10.2018, counsel for the Defendant was directed to file written statement within a period of one week. However, since the matter related to an agreement entered into between the parties in 2001, the documents in question were old and bulky and had to be traced, collected and compiled from the old records of the Defendant. Meanwhile, father of the counsel for the Defendant was



diagnosed with cancer on account of which, her professional commitments were adversely affected. Eventually, the father of the counsel for Defendant expired on 08.11.2018 due to which she could not attend the Court regularly. Further, in view of his old age and poor health, the defendant could not visit Delhi frequently to assist his counsel in preparing the Written Statement, thereby causing a delay in finalisation of the Written Statement.

In view of aforesaid, it has been prayed that delay of 88 days over and above prescribed period of 120 days in filing written statement may be condoned.

In rebuttal, it is argued by Ld. Counsel for the plaintiff that defendant was admittedly served on 22.09.2018 and filed written statement on 18.01.2019, but as affidavit of admission/denial was filed only on 29.05.2019, written statement was effectively filed on the latter date as written statement cannot be take on record without accompanying affidavit of admission/denial as per Commercial Courts Act, 2015. As such, there is a delay of more than 4 months in filing written statement over and above prescribed period of 120 days. Further, it is argued that on 01.02.2019, defendant had conceded that he had filed the written statement on 25.01.2019. It is stated that presuming for the sake of arguments though not admitting that his contention was correct, even then his written statement cannot be taken on record as the time period for filing the written statement had already expired on 18.01.2019. Further, the prescribed period of 120 days as provided under the Commercial Courts Act, 2015 is mandatory and cannot be extended. Ld. Counsel for plaintiff has relied upon **SCG Contracts**



India Private Ltd vs. K.S. Chamankar Infrastructure Pvt. Ltd. (2019) 12 SCC 210 paragraphs 8, 11, 16; and Unilin Beheer Vs. Balaji Action Buildwell CS (COMM) 1683/2016 para 1, 23 to 32.

On merits, it is denied that due to old age and ill health of the Defendant, he could not visit Delhi and sign the affidavits on time. It is further argued that even if for the sake of arguments, it is assumed that the Defendant could not visit Delhi because of health issues as alleged by his counsel, he could have assisted his counsel in preparing the Written Statement through telephone/email or any other means of communication. It is further submitted that the Defendant could have also issued a Special Power of Attorney for signing affidavits. Hence, it has been prayed that the application may be dismissed with heavy costs.

Per contra, it has been stated by the defendant that courts have discretionary powers to grant extension of time for filing written statement, which solely depends on each case and no strait jacket formula has been provided to determine the exercise of such discretion. Further, it is stated that perusal of record reveals that written statement was filed on 18.01.2019 vide diary no. 83763/2019 after getting the affidavits notarized on 17.01.2019, but without supporting affidavit of admission/denial of documents, however, same was cleared by the Registry without pointing out any defect. Further, it is submitted that on 01.02.2019, on account of inadvertence and confusion, it was submitted that the written statement was filed on 25.01.2019, even though it had been filed on 18.01.2019, which is apparent from the case history as available on official website of the Hon'ble



Court. Hence, it has been prayed that application may be allowed and delay in filing written statement may be condoned.

I have perused the scanned file in the light of the case law on the subject and written submissions as filed by the plaintiff.

Following facts are undisputed:

On **22.09.2018**, Defendant was served.

On **16.10.2018**, Ld. Counsel for the defendant appeared and was granted a week's time to file written statement.

On **1.11.2018**, the format for affidavit of admission/denial was notified

On **16.10.2018**, the Written Statement was got attested by the Defendant.

On **18.01.2019**, Written Statement filed for the first time vide Diary No. 83763 of 2019, however, without affidavit of Admission/Denial

On **19.01.2019**, period of 120 days from the service of defendant expired.

On **29.05.2019**, Affidavit of admission and denial of document was filed.

In the background of the facts as stated above, there are two questions for consideration before this Court:

- (a) Whether written statement filed by defendant without affidavit of admission/denial can be taken on record ?
- (b) Whether the Court has the discretionary power to extend the 120 day period as prescribed under the Commercial Courts Act, 2015 ?

The first issue for consideration is whether written statement filed by defendant, without affidavit of admission/denial can be taken on record?

The said issue was extensively discussed in the case of ***Unilin Beheer Vs. Balaji Action Buildwell in CS (COMM) 1683/2016***, wherein it was held



as under :

“23. The core question for consideration is, whether the only consequence of non-filing of the affidavit of admission/denial of documents along with the written statement is of the documents filed by the plaintiff being deemed to be admitted by the defendant OR of the written statement being not taken on record and the defendant being in the position of a defendant who has not filed the written statement.

24. On first blush it appears that there is indeed inconsistency/contradiction, in Rule 3 on the one hand, providing that written statement without affidavit of admission/denial shall not be taken on record and Rule 4 on the other hand, providing that the effect of non-filing of affidavit of admission/denial shall be of the documents being deemed to be admitted.

25. I have wondered, whether the two Rules read together have the effect of providing that on non-filing of affidavit of admission/denial with written statement, though the written statement has to be read but the documents of plaintiff deemed to be admitted. However to hold so, would tantamount to rendering otiose the words " without which the written statement shall not be taken on record" in Rule 3 supra and negate the bar in Rule 3 to taking the written statement on record if unaccompanied with an affidavit of admission/denial of documents.

26. It is the settled rule of statutory interpretation that interpretation which renders otiose any part of a statute, should be avoided.

27. On the contrary the effect of holding that in such a situation, the written statement shall be deemed to have been not filed and the documents filed by the plaintiff deemed to be admitted, would allow full play to both Rules, without making any part thereof otiose. On further consideration, no inconsistency/contradiction is found in the two Rules. This interpretation is also in consonance with the legislative intent.”

Coming to the facts of the instant case in light of law laid down in ***Unilin Beheer Vs. Balaji Action Buildwell’s case (supra)***, it is now settled that written statement cannot be taken on record without the affidavit of admission/ denial of documents. It is the admitted case of the defendant that he was duly served on 22.09.2018 and written statement was filed, *albeit*, without accompanying affidavit of admission/denial on 18.01.2019. Hence, even if same was accepted by the Registry, the said written statement cannot be permitted to be taken on record. Further, presuming that the format of admission/denial affidavit was notified only on 01.11.2018, the period of 120 days from the said notification ended on 01.03.2019. It is a matter of



record that affidavit of admission/denial was filed by the defendant only on 29.05.2019. As such, looking from any angle, the written statement cannot be taken on record unless accompanied by affidavit of admission/denial and in the instant case, there is a delay of at least three months in filing affidavit of admission/denial over and above the prescribed period of 120 days.

The obvious question which then arises is, whether the Court has the discretionary power to extend the 120 day period as prescribed under the Commercial Courts Act, 2015 ?

It is no longer res integra that the period of 120 days for filing written statement and affidavit of admission and denial of documents is sacrosanct and however genuine may be reason for delay, this period of 120 days cannot be extended { *SCG Contracts India Private Ltd vs. K.S. Chamankar Infrastructure Pvt. Ltd. (2019) 12 SCC 210; Unilin Beheer Vs. Balaji Action Buildwell CS (COMM) 1683/2016.* } The principles laid down in these decisions have been consistently been followed in subsequent decisions including *Atlanta Ltd. Vs. & Infrastructure Development Corporation Ltd. & Anr. 2019 (178) DRJ 364* and *Odeon Builders Pvt. Ltd. Vs. NBCC (India) Ltd. 2019 (178) DRJ 121*. Hence, this issue is answered in the negative.

In view of aforesaid discussion, instant application moved by the defendant stands dismissed. Accordingly, written statement filed by defendant is taken off the record.

Application stands disposed of accordingly.



List the matter before the Hon'ble Court on 03.12.2020 for further directions.

**SURYA MALIK GROVER (DHJS)
JOINT REGISTRAR (JUDICIAL)**

OCTOBER 23, 2020
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