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

+ **CS(COMM) 675/2017, I.A. 12546/2018, I.A. 17212/2018**

BHARAT HEAVY ELECTRICALS LIMITED

..... Plaintiff

Through: Mr. Prashant Mehta and Mr. Raghav
Marwaha, Advocates.

versus

EGYPTIAN ELECTRICITY TRANSMISSION COMPANY & ORS

..... Defendants

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Sanjay Gupta,
Advocate for D2 & D3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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20.03.2024

O.A. 33/2021 (under Chapter II (5) of the Delhi High Court (Original Side) Rules, 2018 read with Section 151 CPC has been filed by defendant No. 3 against the Order dated 18.11.2021 passed by the learned Joint Registrar(Judicial))

1. The Chamber Appeal under Chapter II Rule 5 of the Delhi High Court (Original Side) Rules, 2018 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed by defendant No. 3/appellant against the Order dated 18.11.2021, passed by the learned Joint Registrar whereby the Written Statement of the defendant No. 3 has been directed to be taken off the record since it has been filed with beyond a statutory period of 30 days.

2. The facts as mentioned in the O.A., are that the defendant No. 3 had



entered appearance in the Court on 20.02.2018 and complete copy of the plaint as well as the documents was supplied to the defendant No. 3. The period of thirty (30) days expired on 22.03.2018 but the Written Statement was filed only on 10.04.2018, i.e. after the delay of about 19 days. No supporting application was filed seeking condonation of delay of 19 days, while filing the Written Statement on record. Thereafter, on 18.12.2017, an application **bearing No. 15291/2017 under Order VI Rule 17, CPC** was filed by the plaintiff, which was allowed *vide* Order dated 04.05.2018.

3. Learned counsel appearing on behalf of the defendant Nos. 2 and 3 made a statement that on 04.05.2018, no amended Written Statement was required to be filed to the amended plaint.

4. On 06.09.2018, it was observed that the Written Statement of the defendant No. 3 was not on record and the directions were issued to get the same placed on record. Thereafter, an Application under Order 7 Rule 11 CPC was filed on behalf of the defendant No. 2, which was dismissed *vide* Order dated 01.06.2020. It is submitted that in the said Order, the Written Statement of defendant No. 2 was stated to be on record. It is, therefore, submitted that the Written Statement though filed with a delay of 19 days, has been taken on record and the impugned Order of the learned Joint Registrar is liable to be set-aside.

5. **Learned counsel on behalf of the plaintiff** *vide* its Reply has contested the Appeal filed by the defendant No.3. It is submitted that without there being any application for condonation of delay, the 19 days period of delay cannot be condoned. For support of his arguments, reliance has been placed on Pradeep Mehra vs. BCH Electric Ltd. in FAO(OS) 118/2017, decided on 21.08.2017, passed by the Division Bench of this



Court, to argue that admissions once made, cannot be permitted to be withdrawn.

6. Reliance has also been placed upon Friends Motel Pvt. Limited Through Its Director Mr. Arun Dwivedi vs. Shreeved Counsultancy LLP & Ors., in CS(COMM) 140/2019, decided on 15.01.2020, wherein it is observed that by the Co-ordinate Bench of this Court that any condonation of delay beyond the 30 days cannot be permitted unless an application for condonation of delay is filed within the said period of 120 days.

7. **Submissions heard.**

8. The moot issue which arises for determination in the present Appeal is whether in a regular Civil Suit, the timeline of 30 days as prescribed under Order VIII Rule 1 of CPC, 1908 can be extended and whether a formal application for Condonation of Delay is required to avail the benefit of additional 90 days.

9. **Order 8 Rule 1 CPC reads as under:-**

“Rule 1- Written Statement.—

The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

[Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which



shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]”

10. The **Proviso to Order VIII CPC** clearly provides that further time beyond the 30 days, may be allowed by the Court for filing of the Written Statement for reasons to be recorded in writing and on payment of cost. Therefore, the proviso of Order VIII Rule 1 of the CPC does not contain any requirement of filing of formal application for condonation of delay. The discretion is left with the Court, for the reasons to be recorded to extend the time for filing of the written statement beyond 30 days but not beyond 90 days thereafter.

11. It may be mentioned that Section 34 of the Arbitration and Conciliation Act, 1996 contains a similar provision which specifically provides for moving of an application to seek benefit of extension of time. However, Order VIII Rule 1 CPC nowhere provides that moving of an application for extension of time is a necessary pre-requisite. Therefore, the contention raised that there is no formal application filed, is without merit.

12. As has already been detailed the Written Statement was filed and taken on record and was even being relied by this Court while disposing of the application under Order VII Rule 11, CPC. No objection has been taken on behalf of the plaintiff, till such time when the Replication of the plaintiff was objected by the defendant to be taken on record, on account of it being beyond the prescribed period.



13. The record, therefore, shows that the Written Statement was filed on 11.04.2018 and there was no objection taken. The Court in its discretion has taken the Written Statement on record, which was filed within the extended period of 120 days.

14. The O.A. is, therefore, allowed and the Written Statement of the defendant No. 3, is taken on record.

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15. Learned counsel for the defendants, submits that they have no objection to the replication of the plaintiff, is taken on record. Accordingly, the Replication is taken on record.

16. Be listed before the learned Joint Registrar for completion of pleadings and admission/denial of documents on 14.05.2024.

NEENA BANSAL KRISHNA, J

MARCH 20, 2024/RS