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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 07th May, 2025**

+ CM(M) 3260/2024

M/S A. G. OVERSEAS PVT LTD & ORS.Petitioner

Through: Mr. Saquib Arab, Advocate.

versus

CHETAN DASS

....Respondent

Through: Ms. Teena Kataria, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 27628/2025

1. The issued raised in the present petition is very short and precise.
2. An application seeking early hearing has also been filed by respondent/plaintiff and since the learned counsel for petitioner has also joined the proceeding through *video conferencing*, with the consent of the parties, the matter has been taken up today.
3. Application stands disposed of in aforesaid terms and the next date i.e. 13.08.2025 is also cancelled.

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1. The petitioners herein (defendant Nos. 1, 2 and 3 in Trial Court) are defending a suit, which is commercial in nature.
2. They were duly served with the summons of the suit. However, after such service and after their appearance before the learned Trial Court, when the matter was taken up by the learned Trial Court on 29.04.2024, the plaintiff moved an application under Order VI Rule 17 seeking amendment in the



plaint.

3. A copy of such application was supplied to the defendants and the arguments were heard, then and there. The application was allowed and the amendment plaint was directed to be taken on record.

4. It is, however, not very clear whether the defendants had opposed the application or conceded to the abovesaid request seeking amendment in the plaint.

5. Fact, however, remains that the defendants were accordingly, granted opportunity to file written statement to such amended plaint and the matter was adjourned to 12.07.2024.

6. When the matter was taken up by the learned Trial Court on 12.07.2024, noticing that no written statement had been filed, their right to submit written statement has been closed and their defence has also been struck off. The learned Trial Court was also of the view that the period prescribed under the Commercial Courts Act had also expired.

7. Such order is under challenge.

8. The stipulation given in proviso to Order 8 Rule 1 CP is for calculating the period within which a written statement is to be filed. Such period has to be reckoned from the date on which any such defendant was served with the summons.

9. However, once, the service is complete and defendant puts in appearance as well and if subsequent thereto, there is any amendment in the



plaint, though, the Court can give some kind of time-frame to the defendant to file written statement to such amended plaint, for the purposes of striking of defence, the Court cannot, *ipso facto*, rely on the abovesaid provision.

10. Unfortunately, in the present case, even the *summons* which had been issued to the defendants are not in the proper form as these are ‘*Summons for Settlement of Issues*’.

11. It might be a case of some oversight and inadvertence but the *summons* prescribed in relation to a commercial suit were never served upon the defendant.

12. More Importantly, the outer permissible limit to file any written statement had not even expired when the matter was taken up by the learned Trial Court on 12.07.2024.

13. Ms. Teena Kataria, learned counsel for the respondent/plaintiff submits that, without prejudice to her rights and contentions, she would have no objection if the written statement is directed to be taken on record, *albeit*, subject to some cost.

14. Evidently, the defendants should have also been extra-cautious and vigilant and should have ensured that the written statement was filed, as quickly as possible. However, keeping in mind the overall factual matrix of the present case and also the gracious concession given by the learned counsel for the plaintiff and the fact that the right to file written statement was closed despite that fact that the permissible outer limit of 120 days had not yet expired, the present petition is allowed.



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15. According to Mr. Saquib Arab, learned counsel for petitioners (defendant Nos. 1 to 3), the written statement was filed by them on 25.08.2024 and a copy thereof was also supplied to the opposite side.

16. If such written statement has already been submitted before the learned Commercial Court, it will be deemed to be taken on record. However, learned counsel for petitioners would ensure that a copy thereof is duly supplied to the opposite counsel, without any delay.

17. However, if for any reason whatsoever, if it is still on record, the defendants would ensure that such written statement is filed within seven days from today, with advance copy to the other side.

18. Simultaneously, the defendant Nos. 1 to 3 are also burdened with a total cost of Rs. 25,000/- which shall be cleared within seven days from today.

19. Learned Commercial Court, in view of the abovesaid order, while permitting such written statement to be taken on record, would proceed further with the matter in accordance with law.

20. The petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MAY 7, 2025/sw/PB