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

+ **CS(OS) 185/2020**

**VIBHUTI SHARMA**

.....Plaintiff

Through: Ms.Suruchi Aggarwal, Adv.

Versus

**ALOK BHARDWAJ & ORS.**

.....Defendants

Through: Mr.Rohit Gandhi, Adv. for D1.

Ms. Sonali Dhir, Adv. for D8.

Mr.Neeraj Bobby Paonam, Adv. for  
5&6.

**CORAM:**

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

**ORDER**

% **15.12.2020**

**THROUGH VIDEO CONFERENCING**

E-rejoinder to reply to application under Order 39 Rule 4 CPC filed *vide* diary No.1066417 and E-rejoinder to application under Section 340 Cr.P.C. filed *vide* diary no. 1066517, both on 26.11.2020.

It is submitted by learned counsel for defendant No.1 that his rejoinder to application under Order 39 Rule 4 CPC may be treated as rejoinder to CrI.M.A 13630 of 2020 and his rejoinder to application under Section 340 Cr.P.C. may be treated as rejoinder to IA No.8889 of 2020.

So far as the issue, whether the written statement filed by defendant no.1 can be taken on record, submissions of respective counsels have been duly considered.

It was argued on behalf of plaintiff that written statement as filed by defendant no. 1 cannot be taken on record as compliance of Order 39 R.3 CPC was done on 25.07.2020, whereby ex-parte order as well as copy of



plaint and documents were delivered to defendant no.1, however, despite having knowledge of the same, written statement was filed beyond prescribed period of 30 days, without any supporting application seeking condonation of delay. Hence, written statement cannot be taken on record.

In rebuttal, Ld. Counsel for defendant no. 1 submits that he was served with the summons of the suit only on 11.11.2020, and compliance of Order 39 Rule 3 CPC does not amount to service of summons for settlement of suit under Order 5 CPC. Moreover, running of all limitation periods stood suspended by the Hon'ble Apex Court in the wake of Covid pandemic. Hence, no application seeking condonation is required to be filed, as written statement was filed even prior to service, that too, during the operation of suspension of all limitation periods.

In the case of ***Red Bull Ag vs Pepsico India Holdings Pvt Ltd. 2019 SCC Online Del 9901***, where a similar question arose before the Hon'ble Court, it was observed as under :

***21. The issue is when the defendant enters appearance on being informed about pendency of the matter through sources other than the service of formal summons can it be said that the period of limitation for filing written statement does not commence till a formal order is passed directing issue of summons/directing the defendant to file written statement. In my opinion, such an interpretation would not be possible.***

***23. Similarly, a Division Bench of this court in the case of [Flight Center Travels Pvt. Ltd. vs. Flight Centre Ltd. & Anr.](#), (supra) held as follows:-***

***The facts, as they emerge from the suit records, have already been noticed above in detail at the inception of the judgment. The facts show that the counsel did enter appearance for defendants 1 to 4 and thereafter continued to appear for the respondents. It is also a fact that there is nothing on record to show the completion of service qua respondent No. 1 herein. It has been rightly emphasized by learned counsel for the appellant that the service of summons is in furtherance of rules of***



*audi alteram partem*, i.e., opposite side may get a chance to answer the case and no one should be condemned unheard. Let us say, if a defendant having advanced knowledge of the summons enters appearance through counsel and accepts notice in Court, can it still be said that the technical process of issuance of summons and notices to him should still be adhered to? The answer to this question, in our view, would be in the negative. This is the reason why the word used in Order V Rule 1 (1) of the said Code is "may" instead of "shall". This position is abundantly clear in view of proviso added by the amendment of 1976 to Order V Rule 1 of the said Code in addition to the existing proviso, in terms whereof no such summons are to be issued where a defendant appears at the presentation of the plaint and admitted the plaintiffs claim. For convenience of reference we reproduce Order V Rules 1 & 2 of the said Code as under:-.....

*The objective of the process of issuance of summons is to obtain the presence of the defendant for final opportunity to be given to him to rebut the claim against him. Thus, if he appears at the initial stage in a sense there is waiver of the right to have summons served on him. This position has been explained in the case of Sri Nath Agrawal case (supra) and to that extent the aforesaid has been upheld by the Supreme Court in Siraj Ahmad Siddiqui case (supra)." (emphasis added)*

*24. Hence, when at the initial stage itself before summons are actually served on the defendant, the defendant appears in court having been informed through various other sources about the pendency of the proceedings, in such circumstances, it would depend upon the facts of the case as to whether the conduct of the defendant shows deemed service of summons or waiver of the right to have the summons served on him. Needless to say this would be a pure question of fact, dependent upon the facts and circumstances of each case. Normally, once a defendant has appeared in court without service of summons it would be deemed that summons stand served on him and that he has waived his right to receive summons. However, there may be exceptions depending on the facts and circumstances of each case. This aspect assumes greater significance in view of the amendment to Order 8 Rule 1 CPC by the Commercial Courts Act whereby a specified time period has been stipulated for filing of written statement from the date of service of summons."*

*( underlining mine)*

It is a matter of record that compliance of Order 39 R.3 CPC was done on 25.07.2020 qua defendant no.1 through electronic mode. Further, counsel for defendant no.1 filed his vakalatnama on 04.09.2020 and made his first appearance on behalf of defendant no.1 on 23.09.2020 and written statement was filed by defendant no.1 on 26.09.2020.

Considering the facts of the case, in light of the law as detailed in the



foregoing paras, it can be concluded that though summons had not been duly issued by ordinary mode even till date of filing of written statement, as there was no objection on behalf of defendant no.1 at any point of time that he had not received copy of plaint / documents by virtue of which he was unable to file written statement, it would be deemed that summons stood served on him and that he had waived his right to receive summons.

Coming to the second issue, if defendant no.1 was duty bound to file application seeking condonation of delay along with written statement, as 30 days' time period for filing written statement had expired on the day when he had filed his written statement ?

In the present scenario of outbreak of Covid-19 pandemic, and consequential suspension of all limitation periods by the Hon'ble Apex Court by virtue of *order dated March 23, 2020 passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No. 3 of 2020*, I am of the view that 30 day mandatory time period for filing written statement did not commence. Despite appearance of defendant no.1, as a result, in my considered opinion, there is no requirement to move application seeking condonation of delay. Even otherwise, written statement has been filed within mandatory period of 90 days as per the Civil Procedure Code, and therefore, it is within discretionary powers to allow it to be taken on record.

Replication to written statement has already been filed by plaintiff on 20.10.2020.

**Accordingly, pleadings are completed *qua* defendant No.1.**

Learned counsel for plaintiff submits that she has filed certain additional documents along with application to bring the said documents on record. Learned counsel for defendant Nos.5 and 6 submits that additional



documents as filed by plaintiff have yet not been supplied to him. Let same be sent through e-mail today itself to counsel for defendant Nos.5 and 6.

Learned counsel for defendant No.8 submits that she has filed written statement and copy of documents *vide* diary Nos.1246491 and 1246839 respectively, both dated 10.12.2020.

Learned counsel for plaintiff submits that the same cannot be taken on record as it has been filed highly belatedly. On the other hand, learned counsel for defendant No.8 submits that summons for settlement were served for the first time on 11.11.2020, and that too only upon the e-mail id of one of the directors of the defendant no.8 company, and not upon the e-mail id of the company, therefore, service is improper. Nevertheless, written statement has been filed within the prescribed time period of 30 days, and hence, same may be taken on record. Short adjournment sought for filing case law.

Meanwhile, counsel for plaintiff is at liberty to file replication to the written statement filed by defendant No.8, without prejudice to her right to contest taking on record of written statement of the latter.

Learned counsel for defendant Nos.5 and 6 seeks further adjournment for filing written statement and submits that he shall move an appropriate application seeking condonation of delay, in accordance with law, in case required.

List the matter for completion of pleadings on 11.02.2021 at 12.00 noon.

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

**DECEMBER 15, 2020**  
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