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

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

VIBUHI SHARMA

.....Plaintiff

Through: Ms. Suruchi Aggarwal, Sr. Adv. with
Mr. Viraj Kadam, Adv. (through VC)
Mob. No. 9899164642)
virajkadam@gmail.com

versus

ALOK BHARDWAJ & ORS.

..... Defendants

Through: Mr. Niraj B. Paonam, Adv. for D5 and
6 (through VC)
(Mob. No. 9810571345)
Email ID nirajpaonam@gmail.com
Ms. Sonali Dhir, Adv. for D8 (through
VC) (Mob. No. 8826374673)
Ms. Aparna Dhawan, Adv. for D1
(through VC)

CORAM:

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

ORDER

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21.10.2021

IA Nos.5651/2021 and 5652/2021 (under Order VIII Rule 1 CPC seeking condonation of delay in filing written statement moved on behalf of defendant nos.6 and 5 respectively) and issue of taking written statement of defendant no.8 on record)

By virtue of this order, applications regarding condonation of delay in filing written statement filed by defendant no.5 and 6 as well as issue of taking on record written statement of defendant no.8 are being considered.

It is argued by Ld. Counsel for defendant no. 5&6 that service of



summons of the present suit was effected upon them on 11.11.2020 and written statement was required to be filed within thirty days from the date of service of summons. However, at the relevant time, due to worldwide COVID pandemic resulting in lockdown in UK and Nairobi, the answering defendants could not collect and obtain materials to instruct his counsel in India to prepare and file the written statement within the said period of 30 days. It is further submitted that though the instant case is squarely covered by the judgement of Hon'ble Apex Court in ***Suo Moto Writ Petition (Civil) No.3 of 2020***, and the limitation period stood suspended during the aforesaid period, as such, the written statement should be directed to be taken on record, however, as a matter of abundant caution, instant applications have been filed seeking condonation of delay in filing written statement.

Coming to defendant no.8, it has been orally argued that incorrect postal address of defendant no.8 was indicated in the memo of parties, which is evident from the public record of Ministry of Corporate Affairs. Further, perusals of order dated 21.10.2020 reveals that PF for service of summons was returned under objections, as such summons were never issued by the Registry. Further, defendant no.8 came to know of the instant case upon service of summons on his e-mail id, which is no service in the eyes of law as service should have been effected upon the e-mail id of the company and not upon one of the directors. Furthermore, service of ex-parte interim order does not amount to service of summons. Reliance has been placed upon **Sh.Sikender vs Crompton Greaves Consumer Electricals Limited & another reported as CM (M) 493/2020 dated 12.11.2020**



passed by this Hon'ble Court. Even otherwise, irrespective of date of service of summons, the instant case is squarely covered by judgement passed by Hon'ble Apex Court in *Suo Moto Writ Petition (Civil) No.3 of 2020*, whereby all limitations stood suspended by the Hon'ble Court in view of COVID-19 pandemic situation.

In rebuttal, Ld. Senior Counsel has argued that defendant no.5 and 6 have been duly served with Order dated 21.07.2020 in compliance of Order XXXIX Rule 3 CPC along with the entire set of plaint on 25.07.2020 through e-mail. Further, as per the time lines issued by the British Government, partial attendance had been permitted in the workplace and all notarial services were available with prior appointments. It is further submitted that there was no such material relied upon by the defendants, collection of which might have led to delay in filing of written statement. Further, Hon'ble Apex Court in *Suo Moto Writ Petition (Civil) No.3 of 2020* has opined that sufficient cause must be shown for delay and defendants cannot avail the benefit of the judgement without showing reasonable cause for delay.

I have given careful consideration to the submissions advanced in the light of the judicial record.

So far as the issue as to when the time period for filing written statement shall begin to run, in my considered opinion as per the Code of Civil Procedure, the time to file written statement begins to run from the date of service of summons under Order V and not from date of service of



ex-parte interim order under Order XXXIX rule 3 CPC. Law in this regard has been settled in the case of ***Sh.Sikender vs Crompton Greaves Consumer Electricals Limited & another (supra)***, wherein it was reported as under :

“11. Order V rule 10 Code of Civil Procedure stipulates that service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the court.

12. Order VIII rule 1 Code of Civil Procedure stipulates that the Defendant shall, within 30 days from the date of service of the summons on him, present a written statement of his defence.

13. Since the summons were never issued by the court and the petitioner was never served with the summons of the Suit, it cannot be held that the petitioner was deemed served on 18.10.2019 with the summons of the Suit and as such, the written statement which was tendered on 05.03.2020 was beyond time.

14. In view of the above, the impugned order dated 05.03.2020 cannot be sustained and is, accordingly, set aside.

Exception to the rule was however discussed in the case of ***Red Bull AG vs Pepsico India Holdings Pvt. Ltd. 2019 reported as SCC Online Del 9901*** wherein 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.”

It is evident that the instant case is not covered by the exception carved out in ***Red Bull AG’s case (supra,)*** as the defendant no.5&6 as well as defendant no. 8 appeared through their counsel at the first instance only on 20.11.2020, and there is nothing on record to show that the said defendants were having knowledge that they were required to file written statement prior to 11.11.2020 when they were served with summons of settlement of the suit under Order V. **Accordingly, as such, there is no delay in filing written statement by defendant no.8, as same was filed on**



10.12.2020.

So far as the issue of delay in filing written statement by defendant no.5 and 6 is concerned, in my considered opinion, the instant case is squarely covered by judgement passed by Hon'ble Apex Court in ***Suo Moto Writ Petition (Civil) No.3 of 2020***, whereby all limitations stood suspended by the Hon'ble Court in view of COVID 19 pandemic situation. Relevant portion of the judgement is reproduced as under:

“This Court has taken Suo Moto cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.”

In view of aforesaid directions, without going into the merits of the reasons assigned by the defendant no.5&6 for delay in filing written statement, I am inclined to hold that as defendant no.5 and 6 were served with summons of settlement only on 11.11.2020, the time to file written statement did not commence to run and hence, there was no delay whatsoever in filing of written statement by defendant no. 5&6.

Both IAs under Order VIII Rule 1 CPC seeking condonation of delay in filing written statement moved on behalf of defendant nos.5and 6 stand allowed in aforesaid terms. Accordingly, written statement of defendant no.5 & 6 as well as defendant no.8 stand taken on record.



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Replication to written statement filed by defendant no.5&6 as well as defendant no.8 be filed as per law.

List the matter for completion of pleadings on **03.12.2021**.

SURYA MALIK GROVER (DHJS)
JOINT REGISTRAR (JUDICIAL)

OCTOBER 21, 2021
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