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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CS(COMM) 1670/2016
RAVI AND SINGH COMMUNICATION Plaintiff
Through: Mr. Pravir K. Jain, Adv.

versus
SIFY TECHNOLOGIES LIMITED Defendant
Through: Counsel for the defendant
(appearance not given).

AND

+ CS(COMM) 73/2018
SIFY TECHNOLOGIES LIMITED Plaintiff
Through: Counsel for the plaintiff (appearance
not given).

versus
PUNITA DEVI Defendant
Through: Mr. Pravir K. Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **29.01.2019**

IA No.490/2018 (of the plaintiff for revival of IA No.11469/2017) in CS(COMM) No.1670/2016.

1. The counsel for the plaintiff/applicant has been heard.
2. The counsel for the defendant has also handed over a list of relevant dates which has been perused.
3. According to the plaintiff/applicant, (a) the defendant in this suit for recovery of Rs.3,17,57,049.52p was served with summons of the suit by various modes between 27th January, 2017 and 28th February, 2017; (b) the counsel for the defendant appeared before this Court on 27th March, 2017 and complained that only a copy of the plaint had been received and the

CS(COMM) 1670/2016 & CS(COMM) 73/2018

page 1 of 5



documents filed with the plaint had not been received; (c) The counsel for the plaintiff/applicant stated that he will supply the entire set of documents to the counsel for the defendant within a week's time; (d) the defendant was directed to file written statement thereafter; (e) on the next date of hearing i.e. 19th July, 2017, the counsel for the plaintiff/applicant stated that the documents were delivered to the counsel for the defendant on 13th May, 2017 but the defendant had not filed the written statement within the prescribed time and the right of the defendant to file written statement be closed; (f) the Joint Registrar ordered the suit to be listed before the Court on 8th August, 2017; (g) on 8th August, 2017 the Court granted time to the defendant to file written statement subject to payment of costs; (h) it is not in dispute that the defendant filed the written statement within the time granted on 8th August, 2017; (i) on the next date of hearing i.e. 18th September, 2017, the counsel for the plaintiff sought time to file replication and which was permitted and the suit adjourned to 27th September, 2017 before the Court; (j) the plaintiff/applicant filed IA No.11469/2017 dated 25th September, 2017 and which came up before the Court on 27th September, 2017; however the counsel for the plaintiff on 27th September, 2017 withdrew the said application with liberty to avail legal remedies to challenge the order dated 8th August, 2017; directions were issued by this Court for completion of pleadings and for admission/denial of documents; (k) on the next date of hearing i.e. 9th November, 2017, the counsel for the plaintiff sought further time to file replication and for admission/denial and which was granted; (l) thereafter again on 13th December, 2017, the plaintiff/applicant sought further time to file replication and which was



again granted; (m) the plaintiff/applicant preferred FAO(OS)(COMM) No.192/2017 against the order dated 8th August, 2017; (n) the said appeal came up before the Division Bench of this Court on 6th December, 2017 when the same was held to be not maintainable under Section 16 read with Schedule of Commercial Courts Act, 2015 and in view of ***HPL (India) Limited Vs. QRG Enterprises*** 2017 SCC OnLine Del 6955; (o) on the Division Bench so observing, the counsel for the plaintiff/applicant sought leave to revive IA No.11469/2017 or to file a fresh application before this Bench; (p) the appeal was accordingly dismissed as not maintainable with liberty to the plaintiff/appellant to either revive IA No.11469/2017 or make a fresh application; and, (q) it is thereafter that the plaintiff/applicant has filed this application for revival of IA No.11469/2017.

4. A perusal of IA No.11469/2017, though dated 25th September, 2017 i.e. after 8th August, 2017, shows no reference whatsoever to the order dated 8th August, 2017. Even otherwise the plaintiff/applicant could not have before this very Bench challenged the order dated 8th August, 2017 of this Bench vide which time was granted to the defendant to file written statement. IA No.11469/2017 does not even seek review of the order dated 8th August, 2017. Even in the present IA No.490/2018, no review of order dated 8th August, 2017 is sought.

5. As far as Section 16 of the Commercial Courts Act, 2015 is concerned the same merely makes provisions of the Code of Civil Procedure, 1908 (CPC) as amended by the Schedule of the Commercial Courts Act applicable to commercial suits.

6. It is also not as if on 8th August, 2017 there was no opposition by the ***CS(COMM) 1670/2016 & CS(COMM) 73/2018***

page 3 of 5



plaintiff/applicant to grant of time to the defendant to file written statement. The order records the strong opposition of the counsel for the plaintiff/applicant. However, notwithstanding the same, this Court found it appropriate to grant time of two weeks subject to the plaintiff/applicant depositing costs of Rs.50,000/- with the Prime Minister's Relief Fund. The said order binds me and the challenge to the said order cannot be before me only.

7. The counsel for the plaintiff/applicant states that the order dated 8th August, 2017 was specifically challenged in FAO(OS)(COMM) No.192/2017.

8. Neither counsel is carrying with him copy of ***HPL (India) Limited Vs. QRG Enterprises*** referred to in the order dated 6th December, 2017 of the Division Bench.

9. The counsel for the plaintiff/applicant states that the matter be passed over to enable him to get the said judgment.

10. However I am of the view that the proceedings in the present suit have been already sufficiently delayed in the rigmarole regarding the delay in filing of the written statement and no further time be spent for the said purpose. It cannot also be lost sight of that the counsel for the plaintiff/applicant has been repeatedly seeking time for filing replication, though the counsel for the plaintiff/applicant states that it was so sought because the appeal was pending.

11. Be that as it may, the plaintiff/applicant appears to have now missed the bus for contending that the written statement was filed beyond 120 days. It is deemed appropriate to now proceed with the suit in accordance with

CS(COMM) 1670/2016 & CS(COMM) 73/2018

page 4 of 5



law.

12. Even if IA No.11469/2017 were to be revived, the same also does not permit me to allow challenge to the order dated 8th August, 2017 before the same Bench.

13. The application is dismissed.

IA No.4209/2018 (of the defendant for amendment of the written statement) in CS(COMM) No.1670/2016.

14. The counsel for the plaintiff seeks adjournment.

15. List on 29th April, 2019.

CS(COMM) 73/2018.

16. Though this suit is ripe for framing of issues but neither counsel is ready and on the contrary state that this suit is a counter suit to the earlier mentioned suit and be taken up on the same date.

17. List on 29th April, 2019.

RAJIV SAHAI ENDLAW, J

JANUARY 29, 2019

‘pp’..

CS(COMM) 1670/2016 & CS(COMM) 73/2018

page 5 of 5