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

Decided on: 04.05.2022

+ **FAO(OS) (COMM) 106/2022 & CM APPL. 21381/2022**

**M/S VIDHI ELECTRICAL AND ENGINEERING
COMPANY** Appellant

Through: Mr. A.L. Raju and Mr. Sunny
Kumar, Advocates.

versus

M/S C AND S ELECTRIC LTD & ANR. Respondents

Through: Mr. B.K. Singh, Ms. Urvi
Kashiwal and Mr. Hardik
Ahluwalia, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

NAJMI WAZRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 21382/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

FAO(OS) (COMM) 106/2022 & CM APPL. 21381/2022

3. This appeal impugns the order dated 13.04.2022 passed in

C.S.(COMM.) 619/2017 dismissing the appellant's application for taking its Written Statement ('WS') on record and further seeking stay of the suit. The issue in the suit was whether the WS was filed within the prescribed time. It is to be filed within 30 days. However, a further grace period of 90 days can be granted upon an application being filed. In all, 120 days can be granted towards filing of the WS. But for the extension beyond 30 days, delay for each day has to be justified. The issue to be determined is the date on which the appellant was served the summons. By order dated 24.09.2019, a third opportunity was granted to the respondent herein by the learned Joint Registrar to effect the summons upon the defendants/present appellant. The returnable date was 28.11.2019. On the said date, the appellant's counsel filed a vakalatnama. It was noted by the learned Joint Registrar that notice had already been effected upon the defendants by way of affixation on 19.09.2019. That being the position, the defendant ought to have filed the WS within 30 days of receipt of the notice. Assuming that the appellant had not been effectively served the notice on the said date, and if the second date i.e. 28.11.2019 is accepted as the date of effective service, then the WS was to be filed within 30 days therefrom i.e. by 28.12.2019. Instead, a WS was filed on 25.02.2020. The said document remained under objection and its status is not known. It was for the party concerned to have ensured that it was on record.

4. Be that as it may, the application (IA 5892/2022) seeking WS to

be taken on record was dismissed, since there was no application seeking condonation of delay in filing the WS beyond 30 days; no cause for the delay was placed before the court. Delays cannot be condoned automatically or even without asking. The impugned order has referred to the dicta of the Supreme Court in *M/s SCG Contracts India Pvt. Ltd. vs. KS Chamankar Infrastructure Pvt.* (2019) 12 SCC 2020, which has held *inter alia* as under:

“ 11. The law with regard to timelines for filing written statement in a commercial suit has been settled by the judgment of the Supreme Court in M/s. SCG Contracts (supra). The relevant portion of the said judgment is as under:

“8. ...

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 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. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.”

5. Furthermore, a Division Bench of this court by order dated 14.07.2021 in *Sunil Sahoo vs. vs. Anoop Kumar Jain* in FAO (COMM) 110/2021, wherein admittedly WS was not filed within 30 days period from the date of receipt of summons and the appellant did not file any application before the learned Trial Court seeking extension of time for filing the WS, much less show any cause for seeking such extension or for the inability to file the WS within the prescribed time. It was held that the learned Trial Court was correct in closing the right of the appellant to file the WS. The present case is identical.
6. Insofar as the statute requires the filing of WS within 30 days and in justifiable cases grant of extension beyond 30 days up to 120 days, it would be necessary that the application seeking condonation of delay be filed along with WS to explain and put before the court the constraints in filing the WS within time. Only in justifiable cases would the delay be condoned. Such application has not been filed till date. In the absence of an application before the learned Single Judge, no relief could possibly have been granted to the appellant. It is noted that the WS is still lying under objections.
7. The court finds no reason to differ with the view taken by the learned Single Judge.

8. The appeal, along with the pending application, is accordingly dismissed.

NAJMI WAZIRI, J

SWARANA KANTA SHARMA, J

MAY 4, 2022/RW

HIGH COURT OF DELHI



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