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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 232/2017
NBCC (INDIA) LTD.

..... Plaintiff

Represented by: Ms. Shilpi Chowdhary, Mr. Jasdeep
Singh Dhillon, Advs.

versus

AIRCON ENGINEERING SERVICES & ORS.

..... Defendant

Represented by: Mr. Madan Gera, Adv. for D-3.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

03.09.2019

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O.A. 159/2018 (by D-3)

1. By this chamber appeal the appellant/ defendant No.3 challenges the order dated 16th November, 2018 passed by the learned Joint Registrar whereby the right of defendant No.3 to file the written statement was closed.
2. Case of the defendant No.3 is that the defendant No.3/ appellant was served on 22nd August, 2017 at Kolkata and the learned counsel was requested to appear before the Court on 24th August, 2017. When the learned counsel appeared before the Joint Registrar, on the oral request pursuant to the summons received at the Kolkata office, the paper book was not available and time was granted to file the written statement. Learned counsel for the defendant No.3/ appellant received the paper book from the Kolkata office and it was revealed that few pages therein were missing and thus vide letter dated 19th September, 2017 learned counsel for defendant

No.3 requested learned counsel for the plaintiff to complete the missing documents. Needful in this regard was admittedly done on 27th October, 2017. The written statement was filed on 30th January, 2018 explaining the reasons for delay in filing the written statement beyond 30 days on receipt of the complete paper but within 120 days.

3. In the application seeking condonation of delay it was stated that after the receipt of the complete paper book comments was sought from the office of defendant No.3 for preparation of written statement and in this regard the learned counsel held meetings at Kolkata on 15th November, and 16th November, 2017. Since certain informations were to be received from some retired officials, a fresh meeting was held on 16th January, 2018 whereafter proper comments were received by e-mail dated 19th January, 2018 and on the basis thereof written statement was prepared and got signed. It is thus claimed that there is delay of 64 days in filing the written statement beyond 30 days from the statutory period.

4. Case of the plaintiff is that defendant No.3 did not object nor asked for the complete paper book when he appeared before the learned Joint Registrar on 24th August, 2017 till 19th September, 2017 thereby spending substantial period of time. Learned counsel for the plaintiff/ respondent states that since a valid service of notice has been affected on the defendant No.3/ appellant on 16th June, 2017 and the same would be deemed to be with complete documents as no objection to the same was made and the plaintiff having asked for the documents on 19th September, 2017 complete paper book having been provided on 27th September, 2017 even excluding period of 21 days, the extended period of 120 days for filing the written statement from 17th June, 2017 was over much before 30th January, 2018 and the

written statement was filed more than nearly 100 days over and above 120 days time limit granted.

5. Learned counsel for the appellant/ defendant No.3 states that defendant No.3 was never served on 16th June, 2017 though stated in the bailiff's report. When a query was put by this Court as to what is the material before the defendant No.3/ appellant to claim that no service was made despite the bailiff's report, learned counsel for the defendant No.3/ appellant states that no Government officer would state incorrect facts. The issue is not of a Government officer stating incorrect facts, but the fact that there is a report of bailiff that service was affected on 16th June, 2017 and a second service was affected by speed post on 22nd August, 2017. It is on the basis of this second service wherein the case of defendant No.3 is that two pages were missing that the defendant No.3 sought for a proper and complete paper book vide letter dated 19th September, 2017 which was supplied on 27th October, 2017. Learned counsel for the defendant No.3 also contends that period of limitation would start from the day the complete paper book was supplied.

6. The application seeking condonation of delay is completely silent on the first service. However on perusal of the record it is evident that the defendant No.3 was served on 16th June, 2017 by ordinary service through bailiff.

7. As regards whether the period of limitation has to start from first service or the second service, this Court in Frank Anthony Public School Vs. Smt. Amar Kaur Civil Revision (R) Petition No. 580/1983 decided on 3rd October, 1983 while dealing with the issue of whether the period of 15 days under Section 25B of the Rent Control Act would start from the date when

first service or second service is made; held that the period of limitation of 15 days has to start from the second service. This issue was referred by a learned Single Judge of this Court to the Division Bench wherein dealing with all earlier judgments it was held that 15 days limit for a tenant to seek leave to defend has to start from first service though under the provisions service from both the modes is mandated and not from the second service.

8. In this case as per the report of bailiff, the defendant No.3 has been served on 16th June, 2017. The grievance of the defendant No.3 with regard to complete paper book not being available was with regard to the second service through speed post and there is no material on record to come to the conclusion that the first service was affected with an incomplete paper book of the suit.

9. Considering the fact that the written statement filed by defendant No.3 was beyond the period of 120 days from the date of first service i.e. 16th June, 2017, even excluding the period from 19th September, 2017 to 27th September, 2017 this Court finds no error in the impugned order of the learned Joint Registrar.

10. Appeal is accordingly dismissed.

MUKTA GUPTA, J.

SEPTEMBER 03, 2019
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