

M/S Parsvnath Developers Ltd vs M/S Skylark Buildtech Ltd & Anr on 9 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 0

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CM(M) 736/2019 & CM APPL. 22292/2019

M/S PARSVNATH DEVELOPERS LTD

Through:

Mr. Arpit Dwivedi, Ad

(through V.C.)

versus

M/S SKYLARK BUILDTECH LTD & ANR

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defendant No.1 before the learned Trial Court and is defending a civil suit which seeks recovery of Rs.28,21,000/- with interest.

2. The point involved in the present petition is very short and precise.

3. As per petitioner/defendant No.1, though, it had received the summons of the suit on 12.04.2018 and pursuant to such receiving of summons, it also, immediately, appeared before the learned Trial Court without any delay i.e. on 26.05.2018, it was in no position to file any written statement as the complete copy of the plaint and documents had not been supplied to them. It is submitted that the complete set had not been sent along with the summons. It is contended that oral request in this regard was made to learned counsel for the plaintiffs/respondents also and despite the fact that he was made aware about the fact that the copies were deficient, the full set was not supplied to it.

4. Learned counsel for the petitioner does admit that, at no earlier point of time, defendant No.1 had moved any formal application in this regard before the learned Trial Court requesting the Court to direct the plaintiffs/respondents to supply it with the complete set but according to him, whenever it appeared before the learned Trial Court, it made a verbal request in this regard.

5. Since the copies were not supplied to it, defendant No.1, eventually, had to apply for certified copy and those were received by it on 24.12.2018 and, immediately thereafter, within a period of thirty days i.e. on 21.01.2019, the written statement was filed before the learned Trial Court.

6. The grievance raised in the present petition is to the effect that when its application seeking condonation of delay in filing the written statement was considered by the learned Trial Court, said aspects were not appreciated in the manner these should have been and rather relying on a judgment, which relates to delay in filing of a written statement in a suit which is commercial in nature, the delay has been refused to be condoned and, resultantly, the written statement has been

taken off the record.

7. This petition was filed way back in 2019.

8. It was taken up for the first time on 10.05.2019 and notice was issued. However, nobody appeared on behalf of the respondents.

9. When the matter was taken up on 23.05.2019, the learned Trial Court, though, was permitted to continue with the suit but there was a direction that final order may not be passed. Thereafter also, when the matter was taken up by this Court, from time to time, this Court granted opportunities to respondents, time and again, to appear before the Court.

10. So much so, the counsel for the petitioner was also requested to inform his counterpart about the next date of hearing but despite the above, there was no appearance from the side of the plaintiffs/respondents in the present proceedings.

11. On 20.03.2023, learned counsel for the petitioner herein apprised the Court that the information was, indeed, passed on to learned counsel for the plaintiffs/respondents but despite that there was no appearance from their side and this Court, in the interest of justice, deferred passing of adverse orders. When this matter was taken up on 15.09.2023, this Court was compelled to observe that if there was no appearance on behalf of the respondents on the next date of hearing, the matter would be proceeded against ex-parte.

12. Fact remains that there is no appearance from the side of the respondents, despite due service and intimation.

13. As already noticed above, one of the contentions of the petitioner herein is also to the effect that he had informed the then counsel for the plaintiffs/respondents to supply him with the complete copy of the suit to enable him to file appropriate written statement.

14. It looks very strange and mysterious as to why despite there being due intimation in this regard, the plaintiffs/respondents have chosen not to represent themselves in the present proceedings. Naturally, it also goes on to demonstrate that perhaps they concede to the prayer made by the petitioner.

15. Be that as it may, the service has to be a meaningful service and, in this regard, reference be made to Rajesh Kathpal vs. Shubh Steel: 2022 SCC OnLine Del 3403.

16. Meaningful service would take place when complete set of plaint and documents is supplied to the adversary to enable him to file appropriate response to the lis.

17. Needless to say, it was obligatory for any such party to have moved appropriate application before the learned Trial Court with a specific request that the set supplied to it was not complete. However, at the same time, this Court cannot be unmindful of the fact that there was no intention

from the side of defendant No.1 to prolong the matter as after receiving the summons, it kept on appearing before the learned Trial Court on each and every date. This, at least, demonstrates the bona fide intention on the part of defendant No.1.

18. Moreover, it also cannot be forgotten that the suit is not a commercial suit where the timelines for filing written statement are rigid and inflexible and cannot be extended. The limitation period for filing written statement is directory and not mandatory in a non-commercial suit and on sufficient cause being shown, delay can be condoned.

19. Moreover the endeavour of the Court should be decide the case on merits, instead of on technicalities.

20. Learned counsel for the petitioner submits that he is ready to bear any condition to be imposed in this regard by this Court. He also submits that he would adhere to the timeline provided by the learned Trial Court and would ensure that the matter does not get adjourned on account of its non-cooperation.

21. The next date before the learned Trial Court is stated to be 04.07.2025 for recording of evidence.

22. It is also apprised that as far as defendant No.2 is concerned, it is already participating in the proceedings and has even filed its written statement.

23. Keeping in mind the overall facts and circumstances of the case and, in particular, the manner in which the plaintiffs/respondents had avoided to appear before this Court despite grant of numerous opportunities, this Court is compelled to allow the present petition.

24. The petition is, accordingly, disposed of with direction to the learned Trial Court that the written statement filed by defendant No.1 shall be taken on record subject to cost of Rs.1,00,000/- which shall be paid to the opposite side before the learned Trial Court on the next date of hearing which is stated to be 04.07.2025.

25. Since the written statement of defendant No.1 has now been permitted to be taken on record, the plaintiffs/respondents would also be at liberty to file replication, if any, in response thereto. The learned Trial Court would, accordingly, proceed further with the matter in accordance with law.

26. The present petition, along with pending applications, stands disposed of in aforesaid terms.

27. A copy of this order be sent the learned Trial Court for information and compliance.

(MANOJ JAIN) JUDGE APRIL 9, 2025 st/SS