
(2023) 08 DEL CK 0156

In the Delhi High Court

Case No : Regular First Appeal (COMM) No. 13 Of 2023

M S CICO Technologies Limited Through Its Authorized
Representative Mr. Sandeep Chatterjee

APPELLANT

Vs

Ms Anita Agarwal Proprietor Of M/S Shri Mahadev Industries

RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Citation : (2023) 08 DEL CK 0156

Hon'ble Judges : Manmohan, J;Mini Pushkarna, J

Bench : Division Bench

Advocate : Ranjani Sharma, Utsav Trivedi, Himanshu Sharma, Piyush Tiwar

Final Decision : Allowed

Judgement

Manmohan, J

1. Today, learned counsel for the Appellant-Plaintiff has handed over in Court an affidavit of service. In the said affidavit it has been stated that the Respondent has been served with summons by Post, WhatsApp and Email. The said affidavit is taken on record.

2. Consequently, this Court has no other option but to proceed ex-parte against the Respondent-Defendant.

3. It is pertinent to mention that the present appeal has been filed challenging the order dated 19th September, 2021 passed by the learned District Judge in CS (COMM) 378/2021, whereby the suit was dismissed on the ground of limitation.

4. Learned counsel for the Appellant-Plaintiff states that the Appellant-Plaintiff and the Respondent-Defendant were maintaining current, running and non-mutual account and the last transaction between the parties happened on 31st August, 2017 i.e. date of last delivery of products by the Appellant-Plaintiff to the Respondent-Defendant. She states that the period of limitation for filing the suit would start running from 1st January, 2018 and was supposed to end on 1st

January, 2021. She, however, states that in view of the order of the Supreme Court in In Re: Cognizance for Extension of Limitation, Sua Moto Writ Petition (C) No. 3 of 2020 the period from 15th March, 2020 till 28th February, 2022 has to be excluded for calculating the limitation. She further states that the Appellant-Plaintiff had moved an application on 6th March, 2021 for pre-institution mediation where the Respondent-Defendant did not appear and the non-starter report dated 13th July, 2021 was issued. According to her, if this period is also excluded then the suit will be within limitation.

5. A perusal of the paper book reveals that the Appellant-Plaintiff had relied upon the Supreme Court order dated 23rd March, 2020 in Sua Moto Writ Petition (C) No. 3 of 2020 in its plaint. However, the said aspect has not been even referred to, leave alone, dealt with by the learned District Judge, Commercial Court, South-East District, Saket Courts, New Delhi in the impugned order.

6. This Court is also of the view that even if the aforesaid Supreme Court order had not been referred to in the plaint, the Trial Court should have taken judicial notice of the same as it is a very widely circulated order.

7. Consequently, the present appeal is allowed and the matter is remanded back to the Trial Court for a fresh consideration on merits. The Appellant-Plaintiff shall be entitled to refund of the Court fees paid for filing the present appeal.