2026:DHC:3734-DB

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

% ***Judgment reserved on: 24.03.2026***

Judgment pronounced on: 04.05.2026

Judgment uploaded on: 05.05.2026

\+ RFA(COMM) 209/2024, CM APPL. 7735/2025 and CM APPL. 79644/2025

AVON ENTERPRISES THROUGH ITS PROPRIETOR ANITA GUPA .....Appellant

Through: Ms. Kiran Bhardwaj, Ms. Ranjana Pathak and Ms. Prerna, Advs.

versus

CHIBBA AGRO PVT. LTD. ....Respondent

Through: Mr. Ishaan Chawla and Mr. Anubhav Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. By way of the present Appeal, the Appellant (Defendant before the LDJ) seeks to assail the judgment and decree dated 16.01.2024 [hereinafter referred to as 'Impugned Judgment'], passed by the learned District Judge [hereinafter referred to as 'LDJ'], Saket Courts, Delhi, whereby the recovery suit filed by the Respondent (Plaintiff before the LDJ) came to be decreed in its favour.

2. For the sake of clarity, consistency and ease of reference, the parties in the present Appeal shall be referred to in accordance with their respective status before the LDJ.

2026:DHC:3734-DB

A. BRIEF FACTUAL BACKGROUND:

3. In order to comprehend the issue requiring adjudication in the present Appeal, the relevant facts, in brief, are required to be noticed.

4. The parties herein have been engaged in a business relationship since 2017, wherein the Defendant had been purchasing goods from the Plaintiff on a credit basis. The business between the parties proceeded smoothly, with purchase orders being placed periodically via email and/or WhatsApp messages, corresponding to which the Plaintiff used to supply goods as per the specifications, along with invoices and e-way bills. Additionally, a running account/ledger was maintained by the Plaintiff, wherein the payments made by the Defendant were duly adjusted.

5. It has been the case of the Plaintiff that as per its records, an outstanding amount of Rs. 12,45,778/- remained unpaid for goods supplied during the period commencing from 2019 to 2021. Further, it had been stated by the Plaintiff that despite multiple reminders through emails and phone calls, the Defendant failed to clear the dues as mentioned hereinabove.

6. Consequent to the failure on part of the Defendant to make the due payment, the Plaintiff instituted a suit for recovery of Rs. 12,45,778/- along with *pendente lite* and future interest before the LDJ on 26.05.2023. Pursuant thereto, summons was issued to the Defendant on 02.06.2023, which came to be duly served on 11.07.2023. Following which, the Defendant entered appearance on 04.08.2023, however, despite entering appearance no Written





Statement (WS) came to be filed till 07.12.2023. Accordingly, the right of the Defendant to file the WS was closed by the LDJ *vide* Order dated 07.12.2023.

7. Thereafter, the matter was proceeded *ex parte qua* the Defendant, while the Plaintiff led its evidence by way of affidavit, placing on record relevant documents including invoices, ledger account and the correspondences exchanged between the parties. Upon hearing the submissions advanced by learned counsel appearing for the Plaintiff and taking into consideration the material on record, the LDJ, by way of the Impugned Judgment, decreed the suit in favour of the Plaintiff.

8. Aggrieved by the aforesaid decision of the LDJ, the Defendant has approached this Court, seeking our indulgence.

B. SUBMISSIONS ADVANCED ON BEHALF OF THE PARTIES:

9. Learned counsel representing the Defendant, has argued that subsequent to the closure of the right of the Defendant to file the WS by way of Order dated 07.12.2023, the Defendant had without undue delay, filed the WS on 18.12.2023 along with an application seeking condonation of delay. Nevertheless, the LDJ failed to consider the said application. Reliance in this regard has been placed on the order of the Supreme Court in ***Bharat Kalra v Raj Kishan Chabra, 2022 SCC OnLine SC 613***, wherein the Court allowed the condonation of delay of 193 days in filing WS in a suit for injunction, while relying upon

the judgment in ***Kailash v Nankhu***[1]**.**

10. Further, it has been argued that after PW-1 tendered his evidence by way of affidavit, the Defendant sought an opportunity to cross-examine the said witness. However, no such opportunity was granted by the LDJ, leading to the closure of Plaintiff Evidence (PE), without affording the Defendant an opportunity to test the veracity of the aforesaid testimony.

11. It has been argued that upon receipt of summons, the Defendant had joined the proceedings through video conferencing on 10.10.2023 and had sought time to file the WS on the next date of hearing.

12. Lastly, it is the case of the Defendant that on 07.12.2023, the Defendant appeared before the LDJ in person and sought another opportunity to file the WS on account of compelling medical grounds. It has been contended that, the LDJ, despite the Defendant's request to place the relevant medical documents on record, neither took the same on record nor granted any further opportunity, thereby closing the Defendant's right to filed the WS.

13. *Per contra*, learned counsel representing the Plaintiff has argued that the summons was duly served upon the Defendant on 11.07.2023, and the prescribed time of 120 days expired on 09.11.2023.

14. Reliance has been placed on the Order dated 18.12.2023 passed by the LDJ, to contend that the Defendant was given an opportunity to

[1] (2005) 4 SCC 480.

cross-examine the PW-1, however, it failed to avail the same.

15. Further, reference has been made to the Order dated 10.10.2023 passed by the LDJ, to argue that the Defendant was given multiple opportunities to file the WS. Notwithstanding such opportunities granted by the LDJ, the Defendant not only failed to file the WS, but had also failed to file the same within the prescribe time of 120 days.

C. ANALYSIS AND REASONING:

16. This Court has carefully considered the submissions advanced on behalf of the parties and perused the material placed on record, as well as the judgments relied upon by them. The controversy in the present Appeal lies within a narrow compass and calls for adjudication in the backdrop of the statutory framework governing commercial disputes.

17. The principal issue that arises for consideration in the present Appeal is whether the LDJ was justified in closing the right of the Defendant to file the WS upon expiry of the statutory period of 120 days.

18. At the outset, this Court deems it apposite to note that the commercial nature of the suit has not been disputed by either of the parties and as such the same is not being deliberated upon by this Court for sake of brevity. However, it is necessary to highlight that the Section 16 of the Commercial Courts Act, 2015 [hereinafter referred to as 'Act of 2015'] mandates the application of the amended provision of the Code of Civil Procedure, 1908 [hereinafter referred to

as 'CPC'] to the commercial disputes.

19. As per the amended provision of Order V Rule 1 and Order VIII Rules 1 and 10 of the CPC, a WS is required to be filed within 30 days from the date of service of summons, which is only extendable upto a maximum period of 120 days. Upon expiry of the said period, the right of the Defendant to file WS stands forfeited and the Court ceases to exercise any discretionary power to extend the aforestated time period. The Supreme Court in ***SCG Contracts India Pvt. Ltd. v K.S. Chamankar Infrastructure Pvt. Ltd. and Ors.***[2]**,** has authoritatively held that the timeline of 120 days for filing of WS is mandatory in nature and the Courts do not possess residuary powers under Section 151 of the CPC to circumvent this statutory embargo.

20. In the considered view of this Court, upon perusal of dates and events that have unfolded before the LDJ with respect to the filing of the WS, it is abundantly clear that the Defendant, despite being granted multiple opportunities to place on record the WS, failed to file the same within the prescribed limit of 120-day period. Further, it is an admitted position that the summons was served upon the Defendant on 11.07.2023, and as such, the statutory period of 120 days expired on 09.11.2023.

21. Furthermore, after the service of summons, the Defendant had appeared before the LDJ on 04.08.2023 and 10.10.2023 and was granted time to file the WS till 07.12.2023, when his right to file WS ultimately came to be closed by the LDJ. It is also pertinent to note

[2] 2019 SCC OnLine SC 226

that the Defendant before this Court has placed on record his WS with the present Appeal, however, a perusal of same reflects that no efforts were made by the Defendant to file the same prior to December 2023, since the Special Power of Attorney annexed thereto bears the date 16.12.2023, which further substantiates the aforesaid conclusion.

22. In so far as the Defendant's contention with respect to the failure of LDJ to consider his application for condonation of delay is concerned, the said argument is without merit. The LDJ, in view of the settled principle of law, as enumerated hereinabove, lacked the jurisdiction to grant such relief after the expiry of the statutory period of 120 days. Additionally, the judgment of ***Bharat Kalra*** *(Supra)* relied by the Defendant to substantiate the condonation of delay in filing the WS is also distinguishable. The said case, dealt with a suit for injunction, which was not governed by the Act of 2015. On the contrary, in the present case, the suit filed by the Plaintiff, being commercial in nature, is subject to the stringent procedural rigours of the amended provisions of the CPC.

23. Similarly, the plea taken by the Defendant seeking condonation of delay on medical grounds is equally untenable. The medical report placed on record shows that the Defendant was under medical care from 14.10.2023 to 29.11.2023, whereas the statutory period of filing the WS expired on 09.11.2023. Significantly, the Defendant has also failed to furnish any cogent, plausible, or satisfactory explanation for its omission to file the WS during the substantial period preceding 14.10.2023.

24. In this regard, a particular reference is also made to the fact that the Defendant had been entering appearance before the Court since 04.08.2023 and was afforded multiple opportunities to file the WS. Notwithstanding the said indulgence, the Defendant failed to avail the same and instead chose to remain indolent until the fag end of the prescribed statutory period. The record reflects that no steps were taken within the prescribed period, whereas the Special Power of Attorney dated 16.12.2023 further reinforces the inference that the delay is attributable to a lack of due diligence and bona fide conduct rather than any circumstances beyond the control of the Defendant.

25. The argument raised by the Defendant that the LDJ denied an opportunity to cross examine PW-1 is also without merit. A perusal of the record, in particular, the Order dated 18.12.2023, reveals that the Defendant, despite being granted an opportunity to cross-examine the aforesaid witness, failed to avail the same. The right of cross-examination, though integral to a fair trial, is not absolute and is subject to the litigant acting with reasonable diligence. Thus, a party that has forfeited its right to file a WS and has failed to act despite repeated opportunities cannot subsequently assert prejudice arising from its own inaction.

26. Before parting with the present analysis, this Court deems it appropriate to note that the Plaintiff had placed on record a ledger statement reflecting the total amount sought to be recovered from the Defendant. In the absence of any challenge raised to the correctness or authenticity of the said ledger statement and/or the invoices against which the entries therein had been made by the Plaintiff, no case, even

on merits, is made out in favour of the Defendant.

27. Moreover, the evidence of Plaintiff including the testimony of PW-1 and the documents exhibited on his behalf through his evidence by way of affidavit, has remained unchallenged on account of failure of the Defendant to cross-examine the said witness despite the opportunity granted by the LDJ as well as contest the documents produced thereof. In such circumstances, the unchallenged testimony of PW-1 and the documents adduced thereof, has correctly been accepted by the LDJ. Consequently, the case of Plaintiff before the LDJ stood proved on the basis of both oral as well as documentary evidence. Accordingly, the LDJ rightly decreed the suit in favour of the Plaintiff.

D. CONCLUSION:

28. In view of the foregoing discussion, the conduct of the Defendant, as borne out from the record, reflects a clear lack of diligence and an attempt to delay the proceedings. The procedural timeline prescribed under law is not merely directory but is intended to ensure certainty and expedition in adjudication. To condone such delay in the absence of sufficient cause would dilute the legislative mandate and undermine the discipline that governs commercial proceedings.

29. Accordingly, having regard to the applicable rule as well as the inexplicable delay in filing of the written statement, this Court does not find any infirmity in the approach adopted by the learned District Judge.

30. Hence, the present Appeal being devoid of merit is dismissed.

31. Pending applications also stands closed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MAY 04, 2026
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