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

+ RFA(COMM) 131/2023

SANTOSH KUMAR AGGARWAL APPELLANT

Through: Mr.Rajesh Kumar with Mr.Ravi Rai,
Advocates.

versus

M/S ALUCO PANEL LIMITED RESPONDENT

Through: None

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Date of Decision: 05th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

C.M.No.33452/2023

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

RFA (COMM) 131/2023 & C.M.Nos.33449-33451/2023

1. Present appeal has been filed challenging the order dated 11th November, 2022 passed by the learned District Judge in CS No.1235/2018 whereby the suit was decreed in favour of the respondent-plaintiff.
2. Learned counsel for the appellant-defendant submits that the impugned judgment and decree is liable to be set aside on the ground that the suit was filed without due compliance of the mandate enshrined in Section 12A of Commercial Courts Act. In support of his submission, he relies upon the judgment of the Supreme Court in *Patil Automation Private*



Limited vs. Rakheja Engineers Private Limited (2022) 10 SCC 1, wherein it has been held as under:-

“113. Having regard to all these circumstances, we would dispose of the matters in the following manner:

113.1 We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo motu by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-8-2022 so that stakeholders concerned become sufficiently informed.....”

3. He consequently states that all the orders which were passed against the appellant by the Court i.e. striking out defence of the appellant and further closing of evidence were without jurisdiction.
4. Learned counsel for the appellant further states that from a bare perusal of the plaint and the documents filed along with the plaint, it is clear that the goods *qua* invoices No.10 and 30 were neither delivered to the appellant nor any transport bill was filed by the respondent along with the plaint.
5. Learned counsel for the appellant also states that the learned District Judge failed to appreciate that no part of the cause of action had arisen in Delhi, and therefore, there was no territorial jurisdiction with the Trial Court to adjudicate upon the dispute between the parties.
6. Having heard learned counsel for the appellant as well as having perused the paper book, this Court finds that the appellant-defendant despite participating throughout in the suit proceedings, did not file the written statement or raise any defence. Though an application under Order IX Rule 7 CPC was filed on 17th October, 2019 along with an application



under order VII Rule 11 CPC on the ground that the Court had no territorial jurisdiction, yet the same was dismissed vide a detailed order dated 13th October, 2022. It is settled law that the time for filing the written statement cannot be extended beyond the period of 120 days. (See: *SCG Contract (India) Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd (2019) 12 SCC 210*). Consequently, the order dated 17th October, 2019 is in accordance with law.

7. This Court is also of the view that the defences of non-delivery of goods against invoices no.10 and 30 as well as lack of jurisdiction in the present case are the defences on merit. Since in the present case, the right to file the written statement had been closed, as the same had not been filed within the stipulated period, the said defences were not and could not have been dealt with by the Trial Court.

8. This Court is further of the view that the judgment interpreting Section 12A of the Commercial Courts Act, prospectively declares the law w.e.f. 20th August, 2022. Since the suit in the present case had been filed in 2018, the said judgment does not offer any assistance to the appellant.

9. Accordingly, the present appeal being bereft of merit is dismissed along with pending applications.

MANMOHAN, J

MINI PUSHKARNA, J

JULY 05, 2023
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