

ITEM NO.35

COURT NO.6

SECTION XIV

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (C) No. 5383/2020

(Arising out of impugned final judgment and order dated 31-10-2019 in FAO(OS)(COMM) No. 281/2019 passed by the High Court Of Delhi At New Delhi)

NATIONAL INSURANCE COMPANY LTD.

Petitioner(s)

VERSUS

M/S NATIONAL BUILDING CONSTRUCTION INDIA LTD. & ORS. Respondent(s)

(IA No. 53925/2020 - EXEMPTION FROM FILING AFFIDAVIT; IA No. 37520/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 53923/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 12-09-2023 This matter was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MS. JUSTICE BELA M. TRIVEDI**

**For Petitioner(s) Mr. Preetesh Kapur, Sr. Adv.
Mr. Amit Kumar Singh, AOR
Ms. K Enatoli Sema, Adv.
Ms. Chubalemla Chang, Adv.
Mr. Prang Newmai, Adv.**

**For Respondent(s) Ms. Shilpi Chowdhary, Adv.
Ms. Renuka Sahu, AOR
Mr. Shubham Bhatia, Adv.
Mr. Akshay Sharma, Adv.**

**Mr. Abhishek Kumar Gola, Adv.
Mr. Nikhil Jain, AOR
Mr. Anshul Mehral, Adv.
Ms. Divya Jain, Adv.
Mr. Santanu Ghosh, Adv.
Mr. Sagar Saxena, Adv.
Mr. Arun Adlakha, Adv.**

**UPON hearing the counsel the Court made the following
O R D E R**

Heard learned counsel for the petitioner

and the respondents.

The point on which the present petition is founded is on computation of starting day of limitation for filing written statement in a suit instituted in the original side of the Delhi High Court, Commercial Division. There was service of summons by two modes. The first was through the bailiff, which was made on 19th June 2017. A copy of the bailiff's has been annexed at Page '22' of the counter affidavit of the respondent No. 1. The copy of the notice of summons reflects therein that copy of the plaint (complete paperbook) had been supplied. The second service was through speed post made on 22nd August 2017, and contention of the petitioner is that the paperbook which they received through the second mode did not carry two pages which were later made available on 27.10.2017. In the event the date of first service by the bailiff is treated to be the starting date for computing the time for filing written statement, the written statement would have been filed beyond the extended time permissible under the law.

If we treat the second service by speed post to be the starting point, then also the written statement was filed beyond time. On

behalf of the petitioner, it has been urged that the provision of Order V Rule 2 of the Code of Civil Procedure requires service of summons with plaint.

We accept the petitioner's argument on the legal proposition that service contemplated in terms of Order V Rule 2 of the Code would imply service of summons along with the copy of the plaint.

We have gone through the pleadings before the High Court. We find from the impugned order that the High Court disbelieved incomplete service of the plaint. It is essentially a question of fact, which we do not want to reappreciate at this stage.

The present petition is, accordingly, dismissed.

Pending application(s), if any, shall also stand disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(VIDYA NEGI)
ASSISTANT REGISTRAR