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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ IA No. 3009/2022, IA No. 10654/2022 and IA No. 7833/2022 in
CS(OS) 53/2021

INDUPAL KAUR SEHGAL Plaintiff

Through: Dr. R.S. Sasan, Advocate
appeared through VC

versus

DR. DAVINDER PAL SINGH REKHI & ORS. Defendants

Through: Mr. Kamal Bansal, Advocate for
Defendant nos. 1 and 2 appeared
physically (M: 9810911743)
(email: kba@kbaa.in)
Ms. Sonali Jain, Advocate for
Defendant no.3 appeared through
VC

CORAM:
JOINT REGISTRAR (JUDICIAL) MS. TYAGITA SINGH,
(DHJS)

ORDER
26.08.2022

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Matter is taken up through physical hearing as well as video conferencing.

IA No. 3009/2022 (application filed by defendant nos. 1 and 2 u/O VIII Rule 1 r/w Section 151 CPC r/w Section 5 of the Limitation Act for condonation of delay in filing written statement)

AND

IA No. 10654/2022 (application filed by defendant no.3 u/O VIII Rule 1 r/w Section 151 CPC r/w Section 5 of the Limitation Act for condonation of delay in filing written statement)

CS(OS) 53/2021

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AND

IA No. 7833/2022 (application filed by the plaintiff u/O VIII Rule 1 r/w Section 151 CPC for striking off the defence of defendant no.3)

1. Vide this order, I shall dispose off two applications under Order VIII Rule 1 CPC filed by defendant nos. 1 and 2 and defendant no.3 for condonation of delay in filing written statement and one application under Order VIII Rule 1 CPC filed by the plaintiff for striking off defence of defendant no.3.

Brief Facts and Arguments of the Parties

2. In their joint application IA No. 3009/2022 under Order VIII Rule 1 CPC, defendant nos. 1 and 2 have stated that the summons of the suit were served upon defendant nos. 1 and 2/applicants on 06.03.2021 as mentioned in order dated 10.03.2021, and the defendants were supposed to file written statement within 30 days i.e. on or before 05.04.2021, in the ordinary circumstances. However, at the request of applicants, the matter was referred to Mediation with the consent of both the parties, and it remained pending in Mediation till 01.09.2021. During this period, the second wave of COVID-19 Pandemic created havoc, resulting in closure of entire Delhi and the second lockdown, due to which the Hon'ble Supreme Court of India in SMW(C) 3/2020 has extended the period of limitation for filing all pleadings, including written statement, by any person throughout India, vide various orders of the Hon'ble Supreme Court pronounced from time to time.



3. Defendants have further stated that during this period, defendant no.2 was also required to visit his son in London from 06.01.2022 to 19.01.2022, and some time was also taken for making efforts to search the handwritten WILL of their deceased father, which they genuinely believed was written and in the meantime, third wave of COVID-19 Pandemic struck Delhi and vide various orders of the Hon'ble Supreme Court of India in SMW(C) 3/2020, the limitation period for filing pleadings was again extended till 28.02.2022, and further period of 90 days was granted by the Hon'ble Supreme Court of India to all the persons throughout India, from 01.03.2022 onwards, for filing any pleadings, in any type of judicial or quasi-judicial proceedings.
4. In view of abovesaid judgment of the Hon'ble Supreme Court, the applicants/defendant nos. 1 and 2 have prayed for condonation of delay of 363 days in filing their written statement.
5. In IA No. 10654/2022, defendant no.3 has prayed for condonation of delay of 233 days in filing written statement. Defendant no.3 has stated that summons were served upon defendant no.3 on 06.03.2021 and she was supposed to file written statement within 30 days i.e. till 05.04.2021. But due to second wave of COVID-19 Pandemic period, the limitation period was extended by the Hon'ble Supreme Court. Defendant no.3 has stated that she is 67 years old lady who suffers from chronic hyper tension and she had contracted COVID-19



in November, 2020, and was advised by her treating doctor, to refrain from social interactions to avoid risk of contracting COVID-19 again, due to which delay was caused in filing written statement.

6. The plaintiff has also filed one application IA No. 7833/2022 under Order VIII Rule 1 CPC for striking off the defence of defendant no.3 on the ground that defendant no.3 has failed to file written statement within the prescribed period of time, without any valid reasons.
7. In reply to this application filed by the plaintiff, defendant no.3 has stated that due to old age ailments, defendant no.3 could not file written statement within the prescribed period and she has prayed for condonation of delay in filing written statement in view of the judgment of the Hon'ble Supreme Court of India in SMW(C) 3/2020.
8. During oral arguments, learned counsels for defendants argued that the Hon'ble Supreme Court of India in SMW(C) 3/2020 vide various orders from time to time, has extended time period for filing pleadings/written statement, in condonable as well as non-condonable cases, to all the persons throughout India, due to the fact that the COVID-19 Pandemic had struck the entire country and it was not expected from citizens to carry on their day to day functions in usual, uninhibited and unrestricted manner, due to fear of infection.



9. Learned counsels for defendants have relied upon the following judgments in support their arguments:-
- (i) **Prakash Corporates Vs. Dee Vee Projects Ltd.** in Civil Appeal No. 1318/2022 (arising out of SLP(C) No. 13751/2011
 - (ii) **Vinod Kumar Kad and Others Vs. Girish Kumar Kad and Others** 2021 SCC OnLine Del 1964
10. On the other hand, learned counsel for the plaintiff has strongly opposed the applications of defendants and stated that the judgment of the Hon'ble Supreme Court of India in SMW(C) 3/2020 is applicable only in facts and circumstances where the parties are actually affected by COVID-19 Pandemic and where they have no access to e-filing of the pleadings and online appearance, but in the present case, the parties had privilege of online appearance on every date and the privilege of e-filing of the pleadings on the online portal of the Hon'ble Delhi High Court, therefore defendants are not entitled to any relief on the basis of judgment of the Hon'ble Supreme Court of India in SMW(C) 3/2020.
11. Learned counsel for the plaintiff has relied upon the following judgments:-
- (i) **HT Media Limited & Anr. Vs. Brainlink International, INC & Anr.**, (Hon'ble Delhi High Court) (CS(COMM) 119/2020 Date of Decision 17.12.2021).



(ii) **Bharat Kalra Vs. Raj Kishan Chabra**
(Hon'ble Delhi High Court) (CM(M) No. 429/2021)
(Date of Decision 12.08.2021)

12. Learned counsel for defendants placed on record judgement/order of the Hon'ble Supreme Court of India in case titled **Bharat Kalra Vs. Raj Kishan Chabra** (Civil Appeal No. 3788 of 2022 arising out of SLP (C) No. 63/2022) (Date of Decision 09.05.2022) and argued that the order of the Hon'ble Court dated 12.08.2021 (relied upon by learned counsel for the plaintiff) has been set aside by the Hon'ble Supreme Court of India and written statement of defendants in the said case was taken on record.

Reasons for Decision

13. I have perused all the abovesaid applications and replies thereof. Judgments cited by the parties have also been perused.
14. The defendants have stated that they received summons of the suit on 06.03.2021. Perusal of the file noting reveals that written statement alongwith affidavit of admission/denial was filed by defendant no.3 on 24.11.2021 and written statement alongwith affidavit of admission/denial was filed by defendant nos. 1 and 2 on 03.02.2022.
15. In this regard, it is important to quote relevant paras of order dated 10.01.2022 of the Hon'ble Supreme Court of India passed in SMW(C) 3/2020, which is as under:-



“.....5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
- IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138*



of the Negotiable Instruments Act, 1881 and any other laws, which prescribed period(s) of limitations for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

16. It is clear from the abovesaid order of the Hon’ble Supreme Court that the order dated 23.03.2020 of the Hon’ble Supreme Court in SMW(C) No. 3/2020 was restored and the period from 15.03.2020 till 28.02.2022 was directed to be excluded in computing period of limitation, as prescribed under any general or special laws, in all the judicial or the quasi- judicial proceedings. Further, the Hon’ble Supreme Court granted period of 90 days from 01.03.2022 onwards, for filing of any pleadings by any person in any judicial or quasi-judicial proceedings.
17. The summons were served to defendants in the present case on 06.03.2021 i.e. during the period in respect of which exclusion has been granted by the Hon’ble Supreme Court in abovesaid case, and the written statements were also filed by all the defendants during the said period. The Hon’ble Supreme Court has granted benefit of exclusion of the abovesaid period from 15.03.2020 till 28.02.2022 to all the persons within jurisdiction of the territory of India, without any distinction, due to the peculiar circumstances which had arisen in COVID-19 Pandemic period, as those circumstances could never have been anticipated by any person, by any stretch of imagination due to spread of such a



virulent disease at such a mass level throughout the entire world was never seen by any living person in past 100 years. Therefore, the defendants cannot be precluded from grant of benefit of exclusion of the abovesaid period, as they are also Indians and they may also have suffered the direct or indirect effects of the three waves of COVID-19 Pandemic during the abovesaid period.

18. Therefore, the undersigned is of the view that the case of defendants squarely falls within the purview of the abovesaid judgment of the Hon'ble Supreme Court. Hence, both the applications of defendants i.e. IA No. 3009/2022 and IA No. 10654/2022 stand allowed and written statements alongwith affidavits of admission/denial and documents of all the three defendants are taken on record.
19. In view of the fact that the abvoesaid applications of defendants have been allowed, the application of the plaintiff IA No. 7833/2022 is dismissed as having become infructuous.

All the three IAs stand disposed off.

**TYAGITA SINGH, (DHJS)
JOINT REGISTRAR (JUDICIAL)**

AUGUST 26, 2022
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