



2025:DHC:8584



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

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Judgment reserved on: 23.09.2025
Judgment pronounced on: 25.09.2025

+ **CM(M) 289/2025, CM APPL. 8328/2025, CM APPL. 8329/2025**
& CM APPL. 8327/2025

K.A. THOMAS AND ANRPetitioners
Through: Mr. Firoze Ahmad, Advocate

versus

LIC HOUSING FINANCE LTDRespondent
Through: Mr. Mani Kaul, Advocate.

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

1. Petitioners defending themselves as defendants no.2 & 3 in a commercial suit for recovery of money have filed this petition under Article 227 of the Constitution of India to assail orders dated 14.09.2023 and 07.03.2024 passed by the learned trial court. By way of order dated 14.09.2023, application of the petitioners for condonation delay in filing the Written Statement was dismissed and by way of order dated 07.03.2024, application under Order I Rule 10 CPC filed by the present respondent was allowed, thereby dropping the defendant no.1 of the suit from array of parties. I heard learned counsel for both sides.

2. Broadly speaking, circumstances relevant for present purposes are as



follows.

2.1 The present respondent filed a commercial suit for recovery of Rs.15,15,670/- against three defendants, out of whom defendant no.1 is a company while defendants no.2 & 3 are the present petitioners. Summons of the suit were served on the present petitioners on 04.07.2022, so the statutory period to file Written Statement as a matter of right for them expired on 03.08.2022, but no Written Statement was filed till that day. On 09.09.2022, the present petitioner no.1 appeared before the trial court along with Written Statement but since the same was not signed on each page, the same was not accepted and the matter was adjourned directing him to file the Written Statement duly signed on each page. On the next date 16.11.2022, the Written Statement along with Statement of Truth and list of documents was filed. In other words, the Written Statement was filed 135 days after service of summons. The petitioners explained that the Written Statement was ready on 09.09.2022 and even copy thereof was supplied on that day to the learned counsel for the present respondent, so the Written Statement ought to be accepted to have been filed in time. The learned trial court took a view that merely because copy of the Written Statement was supplied to the counsel for the present respondent on 09.09.2022, it cannot be said that the Written Statement was filed within the extendable period of 120 days after service of summons and consequently the Written Statement was taken off the record and defence was struck off.

2.2 Further, it appears that on 14.09.2023, the present respondent/plaintiff filed an application under Order I Rule 10 CPC pleading that at the time of



filing the suit, plaintiff was not aware that defendant no.1 company was undergoing insolvency proceedings before NCLT and that there was a moratorium under Section 14 of the Insolvency and Bankruptcy Code, passed vide order dated 05.12.2018. In view of the moratorium, the present respondent/plaintiff sought dropping of defendant no.1 company from array of parties. The said application was opposed by the present petitioners, alleging that the present respondent/plaintiff had concealed truth. But observing that the plaintiff is *dominus litis*, so the defendant no.1 company could not be proceeded against if the plaintiff so desired. As such, the application under Order I Rule 10 CPC was allowed and defendant no.1 was dropped from the suit.

2.3 Hence, the present petition.

3. Learned counsel for petitioners contended that the impugned order whereby their application for condonation of delay in filing the Written Statement was dismissed is not sustainable in law. It was argued that the Written Statement was ready on 09.09.2022 and even copy thereof was supplied to the other side on 09.09.2022 itself; the Written Statement having been filed within time extendable under law, the application for condonation of delay ought to have been allowed. As regards the allowing of application under Order I Rule 10 CPC, it was argued by learned counsel for petitioners that the said application ought to have been dismissed because the present respondent is guilty of having committed perjury and also because on account of non-joinder of necessary parties, the suit deserves to be dismissed. Learned counsel for petitioners also alleged that the officials of



the present respondent are helping the builders financially.

4. Admittedly, summons of the suit were duly served on the petitioners on 04.07.2022. Also admittedly, on 09.09.2022 the petitioners did not file the Written Statement in the court because the same was not duly signed on each page, so they were granted adjournment to get the same signed and filed. Merely because a copy of the Written Statement was supplied to the other side on 09.09.2022, the requirement of law would not stand satisfied. It is the filing of the Written Statement in court which matters and not supply of copy thereof to the plaintiff. Similarly, just because the affidavit supporting the Written Statement bears attestation date as 09.09.2022, it cannot be said that the Written Statement was filed on the said date. The Written Statement was admittedly filed on 16.11.2022.

4.1 Petitioners have advanced no reasonable explanation for not having filed the Written Statement immediately after 09.09.2022 after getting the same duly signed, instead of waiting till 16.11.2022.

4.2 The proviso to Rule 1 of Order VIII CPC as amended by Section 16 of the Commercial Courts Act stipulates that where the defendant fails to file the Written Statement within a period of 30 days from the date of service of summons, he shall be allowed to file Written Statement on such other day as may be specified by the court for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than 120 days from the date of service of summons and on expiry of 120 days from the date of service of summons, the defendant shall



forfeit the right to file Written Statement and the court shall not allow the Written Statement to be taken on record. Additionally, vide Section 16 of the Commercial Courts Act, proviso to Rule 10 of Order VIII CPC was added, which reiterates that no court shall make an order to extend the time provided in Order VIII Rule 1 CPC for filing of the Written Statement. The legislature in its wisdom repeatedly emphasized that in commercial disputes, the trial court has no power to condone the delay in filing the Written Statement 120 days after service of summons. The outer limit of 120 days in filing the Written Statement is thus a clear and strict mandate of law.

4.3 In the present case, the summons having been admittedly served on the petitioners on 04.07.2022, the Written Statement having been filed 135 days thereafter on 16.11.2022 was certainly beyond the time extendable by court in view of proviso to Rule 1 of Order VIII and proviso to Rule 10 of Order VIII CPC as amended by Section 16 of the Commercial Courts Act.

4.4 Therefore, there is no infirmity in the impugned order dated 14.09.2023 as regards dismissal of the application of the petitioners for condonation of delay in filing the Written Statement and consequently taking the Written Statement off the record.

5. So far as the impugned order dated 07.03.2024 is concerned, as reflected from records, it is subsequent to filing of the suit that the present respondent/plaintiff came to know about moratorium *qua* the defendant no.1 of the suit, so it opted to drop defendant no.1 from array of parties and proceed further with the suit. Merely on the allegation of the petitioners that



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the respondent/plaintiff is guilty of perjury, the impugned order of dropping the defendant no.1 from array of parties under Order I Rule 10 CPC cannot be faulted with. As rightly observed by learned trial court in the impugned order, plaintiff being the *dominus litis* cannot be compelled to sue anyone.

6. In view of above discussion, I am unable to find any infirmity in either of the orders impugned in the present petition, so both impugned orders are upheld and the petition is dismissed. Pending applications stand disposed of.

**GIRISH KATHPALIA
(JUDGE)**

SEPTEMBER 25, 2025/ry