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

% ***Date of Decision: 29th May, 2025***

+ CM(M) 1016/2025 & CM APPL. 33509-33510/2025

SH RISHABH KUMAR ANANDPetitioner

Through: Mr. Sudhanshu Sikka with
Mr. Ambrish Sharma, Ms. Nancy
Thapar, Mr. Himanshu Maan,
Ms. Anjali Mathur and Ms. Sonia
Kumari, Advocates.

versus

ATUL GUPTARespondent

Through: Mr. Sunil Mittal, Advocate
(through V.C.)

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit which is commercial in nature.
2. Admittedly, he was served on 10.09.2024 and the written statement was filed by him on 28.11.2024. However, the written statement has been taken off the record merely for the reason that the application seeking condonation of delay had been filed belatedly i.e. beyond a period of 120 days.
3. In this regard, the learned Trial Court has, primarily, relied upon *M/s OK Play India Pvt. Ltd. Vs M/s A P Distributors & Anr: 2021 SCC OnLine Del 4079*, passed by this Court on 17.08.2021 in CM(M) 346/2020. However, it seems that the attention of the learned Trial Court was not drawn to the fact that the abovesaid judgment of this Court has already been set aside by the Hon'ble Supreme Court in *A.P.*



Distributors and Another vs. OK Play India Pvt. Ltd.: 2022 SCC OnLine SC 1512 and the Hon'ble Supreme Court, in its order dated 12.09.2022, has observed as under:-

- "1. *Leave granted.*
2. *Having heard learned counsel for the respective parties and in the facts and circumstances of the case and considering the fact that the written statement was filed on the 34th day of the service of notice of summons, however, the application for condonation of delay was filed which was beyond the period of 120 days, the High Court has taken too technical view in setting aside the order passed by the learned Commercial Court directing to accept the written statement filed on behalf of the appellants/defendants. The High Court was not justified in setting aside the order passed by the learned Trial Court directing to take the written statement on record.*
3. *In view of the above and for the reasons stated hereinabove, the present appeals succeed. The impugned judgment and orders passed by the High Court are hereby quashed and set aside and the order passed by the learned Trial Court directing to take written statement on record after condoning the delay in submitting the written statement is hereby restored.*
4. *The present Appeals are accordingly allowed. No costs."*

4. Sh. Sunil Mittal, learned counsel for plaintiff has joined the proceedings through *video conferencing* and leaves it to this Court to pass appropriate order.

5. Evidently, impugned order is not sustainable as reliance has been placed upon a judgment which has already been set aside by the Hon'ble Supreme Court. As per the abovesaid judgment of the Hon'ble Supreme Court, the written statement cannot be refused to be accepted, merely for the reason that the application for condonation of delay was submitted beyond the period of 120 days. In the case in hand, the defendant was served on 10.09.2024 and written statement was filed on



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28.11.2024 and thus, after excluding the initial permissible period of 30 days, there is a delay of 49 days.

6. Keeping in mind the overall facts of the case, the petition is allowed and the written statement is, thus, directed to be taken on record. However, for belated filing of the written statement, the petitioner/defendant is burdened with a cost of Rs.10,000/-, which shall be paid to the plaintiff on next date of hearing, before the learned Trial Court.

7. The petition stands disposed of accordingly.

8. Pending applications also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MAY 29, 2025
st/js