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

*Reserved on: 29.07.2026
Date of Decision: 05.08.2026*

CNR No. DLHC010455472023

+ CM(M) 1845/2023 & CM APPL. 58639/2023

PRAJNA INSURETECH PVT LTD & ORS.Petitioners

Through: Mr. Rohan Khatana and
Mr. Arjav Sethi and
Mr. Mayank, Advs.

versus

PAYVORITE INDIA OPC PVT LTDRespondent

Through: Mr. Surender Gupta,
Mr. Deepak Rana and
Mr. Rahul Ranjan, Advs.

CORAM:

HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

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1. The petitioners have assailed the order dated 10.08.2023, passed by the learned District Judge (Comm.)-03, West District, Tiz Hazari Courts, Delhi¹, in CS (COMM) No. 523/2022, titled as '**Payvorite India OPC Pvt. Ltd. v. Prajna Insuretech Pvt. Ltd. & Ors**', whereby petitioners' application under Order VIII Rule 1 of the Code of Civil Procedure, 1908², seeking condonation of delay in filing the written statement was dismissed, and the written statement was directed to be taken off the record.

2. Broadly speaking, the relevant facts of the case are that, on 09.06.2022, the respondent/plaintiff instituted a commercial suit, bearing CS(COMM) No.523/2022, seeking recovery of Rs. 23,75,000/- along with interest, on account of continuing default in payment by the petitioners/defendants since 19.03.2021. The

¹ Hereinafter 'Trial Court'

² Hereinafter 'CPC'



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underlying dispute arose out of a Flipkart gift-voucher facilitation arrangement between parties, wherein the petitioners acting as a commissioning agent, enabled respondent to purchase Flipkart gift vouchers at a discount, which were subsequently blocked by Flipkart's fraud-detection team on 06.10.2021.

3. On the first date of hearing, the learned Trial Court *vide* order 01.07.2022, issued summons to the petitioners, made returnable on 10.10.2022. Thereafter, on 10.10.2022, learned Trial Court noted that the counsel for the petitioners has entered appearance through filing the *vakalatnama*, and advance copy of the written statement has been supplied to the respondent counsel in the court, by the counsel for petitioners. On this date, the petitioners' counsel submitted that the written statement shall be filed within two days.

4. Despite the aforesaid submission, the petitioners filed their written statement, along with Statements of Truth and an application under Order VIII Rule 1 CPC seeking condonation of delay in filing the written statement on 16.11.2022. The reasoning as entailed in the application seeking condonation of delay, reads thus:

“2. That the Answering Defendant had been served on 09.07.2022 and had 30 days to file his written statement from thereon.

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4. That, Defendants No. 1 – 3 are based out of Hyderabad, Telangana and have very limited connections in Delhi, let alone in the legal fraternity. That, consequently it took a lot of time for them to engage the present counsel and they tried their best to get the legal workings done as early as possible.”

5. When the matter got listed on 10.05.2023 before the learned Trial Court, it was orally submitted by the counsel for petitioners that



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the date of service i.e., 09.07.2022 was inadvertently mentioned in the condonation of delay application, whereas the actual date of service happened to be 07.09.2022, which is the date on which the petitioners first learnt of the suit through an email generated through the e-Courts system. On the same date of hearing, the respondent placed a report on record, obtained under the Right to Information Act, 2005, stating that as per the registered post, the summons was actually delivered at the registered address of petitioners on 12.07.2022, although the identity of the recipient of summons was not disclosed in the postal record.

6. Subsequently, the learned Trial Court *vide* order dated 03.07.2023, recorded statements made on behalf of petitioners no. 2 and 3, wherein the petitioners denied having any connection between the petitioners and the person who purportedly received the registered post on 12.07.2022, stating that the person receiving the summons was neither an employee nor an authorized representative of the petitioners.

7. By the impugned order dated 10.08.2023, the learned Trial Court dismissed petitioners' condonation application and directed the written statement to be taken off the record. The operative paragraphs of the impugned order are produced below:

“12. The WS filed by the applicants is otherwise within 120 days even from 12.07.2022. This court could have condoned the delay even in the date of service is taken from 12.07.2022, but the application for condonation of delay in this case will have to be rejected for the reason that along with the written statement filed on behalf of the applicants, no affidavit of admission / denial of the documents of the plaintiff have been filed.

13. In the case of **Mayank Gupta v. Aditya Birla Fashion & Retail Ltd.**, 2023 SCC OnLine Del 1485, facts were that summons in the suit were served upon the petitioner/defendant on 01.12.2021. Written statement alongwith the Statement of Truth was filed on 21.02.2022. An application under Order XIII A of



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CPC was filed by the respondent/plaintiff seeking summary judgment on the ground that in the absence of affidavit of admission/denial on behalf of the petitioner/defendant, the documents are deemed to have been admitted and nothing remained further for trial. Thereafter the affidavit of admission/denial alongwith the condonation of delay application was filed by the defendant on 31.08.2021. It was argued by the defendant that the affidavit of admission/denial itself is a procedural aspect, the mere non-filing of the same alongwith the written statement is a procedural irregularity which can always be corrected by showing sufficient cause as to why it was not filed, coupled with the fact that the affidavit of admission/denial being filed simultaneously. Rejecting the contentions of the defendant it was held as follows:

“15. Undoubtedly, the written statement as well as the Statement of Truth on behalf of the petitioner/defendant appears to have been filed within the stipulated period of time with no objection on that score on behalf of the respondent/plaintiff.

*16. However, as admitted, the affidavit of admission/denial of documents of the plaintiff was not accompanying the written statement. *It is clear from the reading of Order XI Rule 1 of Commercial Courts Act, 2015 and the provisions contained therein that the timelines prescribed by the amended provisions of Civil Procedure Code, 1908 as well as the Commercial Courts Act, 2015 are strict and mandatory and there is no question of any leverage which can be afforded to any party which defaulted thereof.*

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21. This Court has perused the impugned order whereby the learned Trial Court has based its reasoning on the judgments passed by the Coordinate Bench of this Court in Okay Play and Unilin Beheer B.V. (Supra) whereby the same provisions were tested and also held that the provisions are mandatory and not having filed the affidavit of admission/denial alongwith the written statement, the affidavit as well as the written statement was not taken on record nor considered for any purposes.

22. The said judgment also considered the aspect if the affidavit of admission/denial would have been filed within the stipulated period of 120 days' period from the date of service of summons, the delay in filing affidavit of admission/denial, before the expiry of 120 days could be



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condoned and the affidavit of admission/denial could be taken on record."

14. In the case of **UnilinBeheer B.V. v. Balaji Action Buildwell** reported in 2019 SCC OnLine Del 8498, it is held by the Hon'ble Delhi High Court in para 30 & 31 as follows :-

"30. Under Order VIII Rule 10 of the CPC, upon non-filing of written statement, the Court has discretion, depending on facts, to either pronounce judgment forthwith or direct the plaintiff to prove his claim. Deemed admission by the defendant of the documents of the plaintiff, under Rule 4 supra, will also result in the Court, where defendant has not filed affidavit of admission / denial with written statement, on the basis of admission of documents pass a decree forthwith rather than relegating the party to proof of his claim based on documents.

31. I thus hold, that in the event of the written statement being filed without affidavit of admission / denial of documents, not only shall the written statement be not taken on record but the documents filed by the plaintiff shall also be deemed to be admitted and on the basis of which admission the Court shall be entitled to proceed under Order VIII Rule 10 of the CPC."

8. Aggrieved by the said impugned order, the petitioners are invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

9. Learned counsel for the petitioners submits that the learned Trial Court, itself found that the delay in filing the written statement to be condonable, and therefore, could not have dismissed the condonation of delay application solely due to non-filing of the affidavit of admission/denial, especially when neither party was called upon to address arguments on the application, before the learned Trial Court.

10. Learned Counsel further submitted that the requirement of filing an affidavit of admission/denial along with the written statement,



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while treated as mandatory in **UnilinBeheer** (*supra*) and **Mayank Gupta** (*supra*), has been treated contrarily, as a curable procedural defect under Order XI Rule 4(5) CPC, in the judgments of this Court in **Sudhakar Singh v. Webkul Software (P) Ltd.**³, and **COSCO (India) Ltd. v. ParamsukhNirman (P) Ltd.**⁴.

11. *Per contra*, learned counsel for the respondent submits that the written statement was filed beyond the outer limit of 120 days from the date of service of summons, having been filed on the 127th day computed from 12.07.2022 i.e., the date of delivery recorded in the postal record, and further confirmed by the RTI report. It is further submitted that no affidavit of admission/denial has been filed by the petitioners till date, even before this Court, and that the timelines prescribed under the CPC, as amended by the Commercial Courts Act, 2015, are strict and mandatory.

12. Heard. Perused the record.

13. At this juncture, upon consideration of the record, it is observed that on a plain computation, the period from the date of service as per the RTI report's record i.e., 12.07.2022 till 16.11.2022, the date on which the written statement was filed, comes up to 127 days. Computed from 09.07.2022, the date of service pleaded by the petitioners themselves in the condonation application, the period comes up to 130 days. It is only the date of 07.09.2022, asserted as the date on which the petitioner first learned about the suit through the e-courts system email dated 07.09.2022, which brings the filing of written statement within the 120-days outer limit. The impugned order does not record a finding on the exact date on which summons were

³ 2020 SCC OnLine Del 436

⁴ 2019 SCC OnLine Del 9633



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served upon the petitioner, a determination necessary to compute the delay in filing from a fixed date on which the service was completed.

14. It is, however, at once apparent, that the impugned order, at paragraph 12, only records the delay in filing the written statement as condonable, as it stood filed within 120 days, even from 12.07.2022, and proceeds thereafter, to dismiss the condonation application on the separate ground of non-filing of the affidavit of admission/denial with the written statement.

15. In the circumstances, and without expressing any opinion on the merits of the parties' submissions, this Court deems it appropriate to set aside the impugned order dated 10.08.2023, and to remand the matter to the learned Trial Court to first arrive at a definite finding on the date of service of summons and the consequent computation of the 120-day period, and thereafter to decide the aspect of non-filing of admission/denial affidavit in light of such finding, and in accordance with law.

16. The learned Trial Court shall fix a date of hearing within one week from the date of pronouncement of this judgment and proceed to adjudicate the matter afresh in accordance with law, keeping in view the aforesaid observations.

17. Accordingly, the present petition, along with pending application(s), if any, stands disposed of in the above terms.

18. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL, J.

AUGUST 5, 2026/AS/os