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

Reserved on: 28th March, 2026
Date of Decision: 01st April, 2026

+ CM(M) 2569/2024 & CM APPL. 28662/2024

M/S KRISHAN KUMAR SOLE PROPRIETOR M/S BALAJI
GLOWTICSPetitioner

Through: Mr. Virendra Rawat, Mr. Rishabh
Sharma and Mr. Siddharth N., Advs.

versus

M/S JAILAXMI ENTERPRISES PVT LTDRespondent

Through: Mr. Shubham Jai and Mr. Ashish
Kumar Arya, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER

1. The present petition has been filed under Article 227 of the Constitution of India, assailing the order dated 12th January 2024 passed by the learned Trial Court in *C.S. (COMM.) No. 37/2023*, whereby the applications filed by the petitioner - one under Order VIII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 ("*CPC*") seeking restoration of the right to file the written statement, and another application for condonation of delay in filing the written statement have been dismissed.
2. Heard. Record perused.
3. Learned Counsel for the petitioner has argued that the written statement could not be filed within the stipulated time granted by the learned Trial Court, as the petitioner was unable to communicate with his previous counsel,



who had traveled outside India and the entire record was with him. It is contended that the petitioner should not suffer, as the non-filing of the written statement would seriously prejudice his right to defend a false and frivolous suit. It is further submitted that the petitioner shall suffer an irreparable loss if an opportunity to file the written statement is not granted.

4. *Per contra*, learned Counsel for the respondent has argued that there is no infirmity in the impugned order and that the present petition has been filed only to delay the Trial proceedings. It is accordingly prayed that the petition be dismissed.

5. *Vide* order dated 11th August 2023, passed by the learned Trial Court, the right of the petitioner to file the written statement has been closed

6. The relevant portion of the impugned order dated 12th January 2024 reads as follows:

“7. As per Code of Civil Procedure amended by the Commercial Courts Act, 2015, the written statement (WS) cannot be taken on record after expiry of outer limit of 120 days under any circumstances.

8. During the course of arguments, Ld. Counsel appearing on behalf of defendant fairly concedes that the written statement was not filed within maximum period of 120 days even if it was counted from the date of appearance of counsel before the court i.e. 03-3-2023.

9. It is now no more res integra that in the matter involving commercial disputes, the court does not have power to condone delay beyond 120 days as held by Hon'ble Apex Court in case of SCG Contracts India Pvt. Ltd. (supra), to quote:-

“A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and



payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the Defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

10. Several High Court judgments on the amended Order VIII Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the Code of Civil Procedure will have to be held to be mandatory. [See Oku Tech Private Limited v. Sangeet Agarwal and Ors. by a learned Single Judge of the Delhi High Court dated 11.08.2016 in CS (OS) No. 3390/2015 as followed by several other judgments including a judgment of the Delhi High Court in Maja Cosmetics v. Oasis Commercial Pvt. Ltd. MANU/DE/7868/2017.

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order VIII Rule 1 on the filing of written statement under Order VIII Rule 1 has now been set at naught.”

10. Having considered the submissions made on behalf of both the sides and keeping in view the fact that written statement in the present case was admittedly not filed within 120 days, as also in view of law laid down in cited case of SCG Contracts India Pvt. Ltd. (supra), the Court is of the considered opinion that the applications lack merit and



deserve dismissal. Accordingly, both the applications are dismissed and stand disposed off.”

7. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 bringing in their wake certain amendments to the Code of Civil Procedure.

In Order VIII Rule 1 CPC, a new proviso was substituted as follows:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the 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 one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record Section 151 CPC.”

8. From a perusal of the aforesaid proviso, it is clear that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement, and the Court has no further power to extend the time beyond the said period of 120 days.

9. The record reveals that the written statement has been filed by the petitioner on 10th August 2023. The petitioner entered appearance before the learned Trial Court on 03rd March 2023. Even if this date is taken as the date of service, then also the written statement has been filed beyond the statutory period of 120 days. Since the written statement has been filed after the expiry of the statutory period of 120 days, the Court has no power to extend the time beyond this period of 120 days. Accordingly, this Court does not find any



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illegality or infirmity in the impugned order, as the same has been passed in accordance with law, and is upheld.

10. The petition is dismissed as being devoid of any merit. Pending application(s), if any, also stand disposed of.

**RAJNEESH KUMAR GUPTA
JUDGE**

APRIL 01, 2026/ABK