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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 128/2022**
ASIAN HOTELS NORTH LTD Plaintiff

Through: Mr. Sidhant Kumar with Mr.
Gurpreet Singh Bagga, Adv alongwith
plaintiff in person (9161611611)
(gurpreetbagga49@gmail.com)

versus

YES BANK LTD & ORS. Defendants

Through: Ms. Manyaa Chandok & Dr Joginder
Singh, Advs for D2 & 3 (9899675905)
(manyaa@sidhantkumar.net)

CORAM:
MS. VANDANA JAIN (DHJS) JOINT REGISTRAR(JUDICIAL)

ORDER
% **22.11.2022**

IA No. 11723/2022(U/S 151 CPC filed by D-1 for condonation of delay of 89 days in filing written statement)

Reply filed. Additional reply filed by plaintiff and rejoinder to the reply and additional reply filed by D1.

The perusal of record shows that the leave to file the additional reply was never sought by the plaintiff, therefore, same cannot be considered. Similarly the portion of the rejoinder to the additional reply will also not be considered.

Pleadings in the IA are complete. Application is taken up for hearing.

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Learned counsel for D1 has argued that counsel for D1 appeared on the very first date 24.02.2022 and accepted the summons of the suit. Hon'ble Court vide the said order granted four weeks time to file the written statement, however the written statement has been filed 89 days after the expiry of thirty days from 24.02.2022. Learned counsel has argued that the delay was unintentional. He has argued that due to COVID19 pandemic the offices of D1 and the advocates both were working remotely with skeletal staff, and the process of analysing the papers and proceedings, legal implications which were involved took time which caused delay in filing the written statement. He has further argued that the written statement has been filed before the expiry of maximum 120 days and therefore, delay be condoned.

On the other hand, learned counsel for plaintiff has vehemently opposed the application and has argued that the defendant No.1 has been resorting the dilatory tactics to circumvent to mandatory timelines as applicable to the Commercial Suits. Learned counsel has further argued that the mandatory timelines as provided under Commercial Courts Act cannot be diluted by the exercise of inherent power u/S 151 CPC. Learned counsel has further argued that no application for seeking enlargement of time to file the written statement was filed after expiry of statutory period of 30 days. He has further argued that discretion to condone the delay till further period of 90 days at the maximum can be exercised only after recording judicial satisfaction on the sufficiency of the reasons given by the defendant.

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Learned counsel has relied upon judgment of **3M Company vs Vikas Sinha & Anr in CS (COMM) 144/2019** dated 05.07.2022 in this regard. He has further argued that the plea taken by the defendant in respect of defendant No.1's and its advocate's office being run by a minimal staff is apparently false as the proceedings of this suit as well as the other connected bearing No. CS (COMM) No. 626/2021 clearly show that during this time when the defendant No. 1 was to file the written statement in the present case, the other applications were being filed. The written statement in the other case including voluminous documents were also filed in the connected case just a day before the first date of the present suit which shows that the office of D1 as well as that of its advocate was functional in a normal manner during this period and therefore, the reasons given in the application cannot be turned as the sufficient ones so as to seek condonation in the present Commercial Suit. Learned counsel requests for dismissal of the IA.

I have heard the arguments and have perused the record carefully.

Certain undisputed facts are as under: the defendant No. 1 accepted the summons of the suit on the very first date i.e. on 24.02.2022. The statutory period to file the same expired on 26.03.2022. The written statement, affidavit of admission/denial of documents, list of documents alongwith present application seeking condonation of delay were filed on 23.06.2022 i.e. before expiry of 120 days from the date of its service. The maximum period for which delay can be condoned is 90 days after expiry of initial 30 days for filing the
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written statement. As is argued, the reasons put forth by the defendant No.1 does not sufficiently explain the delay so caused in filing the written statement. The submissions made by learned counsel for plaintiff with respect to the fact that D1 was diligently pursuing the other connected case and the other proceedings in the present case are found to be correct.

As far as **3M COMPANY** (*supra*) relied upon by learned counsel for plaintiff is concerned, it is not applicable to the case in hand as in that case the application of condonation of delay was not moved within the period of 120 days.

In **Ramacivil India Construction Pvt Ltd vs NBCC (INDIA) LTD** passed in **CS (COMM) 381/2022** dated 19.10.2022 which was also a commercial suit, the written statement was filed only on 120th day, however, Hon'ble Court allowed the written statement to be taken on record subject to costs. The case is at its initial stage and in order to decide the same on merits, it is necessary to take the written statement on record. Hence, same is allowed to be taken on record, subject to cost of Rs 25,000/- payable by D1 to plaintiff.

Replication be filed in accordance with law.

IA stands disposed off accordingly.

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Right to file written statement of D-2 & 3 has already been closed.

Learned counsel for D-4 submitted that he does not wish to file written statement on behalf of D4.

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As requested, let the matter be placed before Hon'ble Court on the date already fixed in the case i.e. on 24.11.2022 for further directions.

VANDANA JAIN (DHJS)
JOINT REGISTRAR(JUDICIAL)

NOVEMBER 22, 2022
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