



\$~9

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 370/2020
FLIPKART INTERNET PRIVATE LIMITED..... Plaintiff

Through: Ms.Surbhi Pandey (VC),
Advocate

versus

GODADDY OPERATING COMPANY LLC & ORS.
..... Defendant

Through: Mr.Parva Khare, Advocate for
D-1, 2 & 31.
Mr.Ravi Prakash CGSC,
Mr.Farman Ali, Ms.Usha Jamnal,
Advocates for D-29 & 30

CORAM:
JOINT REGISTRAR (JUDICIAL) SH. PURSHOTAM
PATHAK (DHJS)

ORDER

01.08.2023

%

IA No. 10669/23 under Order VIII Rule 1 r/w Section 151
CPC r/w Section 5 of Limitation Act 1963 filed by the
defendant no. 2 &31 for condonation of delay of 70 days and
for taking on record the written statement.

Vide this order, I shall dispose off the present application filed by defendants/applicants u/O VIII R1 CPC for taking on record the written statement(s).

Brief Facts

Plaintiff has filed the present suit for permanent injunction restraining violation and infringement of the rights in the trade mark, infringement of copyright, passing off, unfair trade practice, damages etc. against the defendants.

After being impleaded on 11.11.2022, defendant no 2 &31 have filed the present IA, stating that defendants/applicants have acted in bonafide manner to the best of their abilities in order to



avoid any delay in filing the written statement. However due to defendant no. 31 being based out of Seychelles, there was an unexpected delay in getting the information and instruction in relation to the present case, therefore some delay has occurred in filing the written statement. It is also stated that the time period for filing the written statement for defendants / applicants began from 14.02.2023 and not from 11.11.2022 as the amended memo of parties was served upon defendants on 14.02.2023. It is stated that the defendants have filed the written statement after the delay of 70 but the delay should be condoned due to the reasons mentioned in the application, further no prejudice will be caused to the plaintiff, if the application is allowed and defendants are allowed to contest the suit filed by plaintiff.

Reply has been filed by plaintiff stating that all the allegations made in the application are false and defendants ought to have filed the written statement within 30 days from the date of service of summons or with the leave of court within the outer limit of 120 days. It is also stated that the defendants were impleaded on 11.11.2022 which is reflected in the order dated 11.11.2022 of the Hon'ble Court, but they filed the written statement on 24.05.22 after a delay of 165 days and since written statement cannot be filed by the defendants after 120 days, as per ***The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015***, the written statement should not be taken on record.

Defendant no. 2&31 were impleaded on 11.11.2022 and Ld counsel appearing on their behalf accepted the notice and was directed to file the written statement in due course. The present written statement had been filed by the defendant no. 2 & 31 on 25.05.2023



Learned counsel for the plaintiff has relied upon “Judgment dated 17.12.2021 in *HT Media Limited & Anr. Vs. Brainlink International Inc. & Anr.* C.S.(COMM) 119 of 2020 ; Judgment dated 24.01.2013 in *Flight Center Travels Pvt. Ltd. Vs. Flight Centre Limited & Anr.* FAO (OS) 255 of 2012 ; and Judgement dated 28.08.2019 in *Red Bull AG Vs. Pepsico India Holdings Pvt. Ltd. & Anr.,* (C.S (COMM) 1092 of 2018” in support of her contentions, that written statement as per ***The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015*** cannot be filed beyond the outer limit of 120 days from the date of service and said delay cannot be even condoned by the court

On the other hand, learned counsel for the defendants has relied upon the judgment titled “*Babu Gita Ram Kalsi Vs. S.Prithvi Singh & Ors., AIR 1956 P & H 129* and *Nahar Enterprises Vs. Hyderabad Allwyn Ltd. & Anr. (2007) 9 SCC 466*”.

I have gone through the rival contentions, it has been held in the following judgments:-

- i) ***System Air India Private Limited Vs. ETA Engineering Pvt. Ltd. in CS (COMM) 56/2016 decided on 29.11.2016;***
- ii) ***Oku Tech Pvt. Ltd. Vs. Sangeeta Agarwal in CS (OS) 3390/2015 decided on 11.08.2016;***
- iii) ***Gulf DTH FZ LLC Vs. Dish Tv India Pvt. Ltd. in CS (OS) 3355/2016 decided on 30.08.2016;***

That as per the amended provision of ***Commercial Courts, Commercial Division and Commercial Appellate Division of***



High Courts Act, 2015. The Court may extend the time for filing the written statement, but such extension cannot be beyond the period of 120 days after service of summons.

It has been further held in the judgment **“System Air India Private Limited (supra)** as under:-

“Having heard the learned counsel on both sides and having gone through the amended provisions of CPC, this court finds the observations of the learned single Judge in the above mentioned two cases to be the appropriate view which deserve to be followed. After the amendment was carried out to CPC, for purposes of trial of commercial disputes before the Commercial Courts Act, the discretion to grant any condonation beyond the maximum period of 120 days has been taken away. In these circumstances, the Commercial court cannot either look into the grounds on which the delay is being explained or take a discretionary view so as to permit any extension beyond the maximum period of 120 days”.

Further as per schedule to the **Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015** most specifically clause (D) which has been amended with respect to order 8 R 1 CPC, same reads as under:-

(D) In Order VIII:-

(i) In rule 1, for the proviso, the following proviso shall be substituted, namely:-

“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 twenty days from the



date of service of summons and on expiry of one hundred 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.”

On bare reading of the said proviso, as is applicable to order VIII R1 CPC, shows that even the court has no power to condone the delay in filing the written statement, where it has been preferred by the defendant beyond outer limit of 120 days as stipulated under the said Act.

Learned counsel for the defendants has relied upon the judgment mentioned above, which in my respectful view is not applicable to the facts and circumstances of the present case, in view of the specific amendment inserted into the ***Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.***

Even otherwise defendants no.1&2 had ample time to file written statement, as they accepted notice on 11.11.2022, the date when they were impleaded, but inspite of that they had incurred the risk of not filing the written statement on time. There is no force in the contentions of Ld.counsel of defendants / applicants that the time period for filing the written statement for defendant no. 2 & 31 starts from the date, when they were served the copy of amended memo of parties, as there was a direction in the order dated 11.11.2022 for filing the amended memo of parties. There is a direction in the order dated 11.11.2022 for filing the amended memo of parties but there is no such direction that written statement shall be filed only after filing of amended memo of parties. Consequently there is no plausible explanation furnished for not filing the written statement on time by



defendant no. 2 & 31. Since ~~your~~ statement has been preferred by defendant no.2&31 beyond the stipulated outer limit of 120 days, said delay cannot be condoned even by the court. As a resultant written statement filed by defendant no.2&31 cannot be taken on the record. Therefore right to file written statement by defendant no. 2&31 is liable to be closed.

IA is hereby disposed off as dismissed.

CS(COMM) 370/2020

Defendant no. 22 has been deleted.

Pleadings between plaintiff and defendant no.1 are complete.

The defence of remaining defendants has already been struck off on 12.09.2022.

Ld. Counsel for defendant no. 7 submits that “Go Daddy” is the domain name registrar of defendant no. 11 and not the “Name Chip” whereas, the domain name of defendant no. 18 is unregistered. Ld. Counsel for the plaintiff submits that she will be taking instructions regarding the same from the plaintiff and will take appropriate steps thereafter.

Put up for admission / denial of documents on 17.10.2023.

**PURSHOTAM PATHAK (DHJS),
JOINT REGISTRAR (JUDICIAL)**

AUGUST 1, 2023/sk

Click here to check corrigendum, if any