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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 525/2023

RAM NARAIN SODHI & ORS.

.....Plaintiffs

Through: Mr. Dushyant Manocha, Ms. Anannya Ghosh, Ms. Doel Bose, Mr. Brian Henry Moses, Ms. Mrinalini Mishra, Ms. Kashish Chhabra, Advs.

versus

PRANESH SODHI

.....Defendant

Through: Mr. Shagun Agarwal, Adv.

CORAM:

DR. JAGMINDER SINGH (DHJS) JOINT REGISTRAR (JUDICIAL)

ORDER

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24.09.2024

I.A. No. 4485/2024 (by plaintiff for closing the right of defendant to file written statement and striking off the belated written statement) & I.A. No. 5629/2024 (by defendant for condonation of delay of 28 days in filing the written statement)

1. Part arguments already heard. Written submissions already filed by both the parties.
2. Keeping in view the facts and prayers in the aforesaid IAs, both these IAs are taken together for hearing. Arguments heard.
3. Learned counsel for plaintiff submitted that right of the defendant to file written statement may be closed as he has failed to file the written statement within statutory period of 30 days without any sufficient reason.

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Regarding application for condonation of delay, he submitted that the application was not filed with the written statement but same has been filed after the even extended period of 120 days and that too was filed after the filing of application for closing the right of the defendant to file written statement and striking off the belated written statement. Learned counsel further argued that as application for condonation of delay was not filed even within 120 days of the service, the written statement of defendant till then was not to be considered as filed. In view of the Chapter VII Rule 4 of the Delhi High Court (Original) Side Rules, as the defendant failed to file the written statement within the extended period of 120 days, his right to defence may be struck off and his application for condonation of delay may be dismissed.

4. Learned counsel for plaintiff also relied upon the following judgments i.e.

- a) Manhar Sabharwal v. High Court of Delhi & Ors., W.P. (C) 15091/2023;*
- b) Ram Sarup Lugani and Another v. Nirmal Lugani and Others, 2020 SCC OnLine Del 1353;*
- c) Friends Motel Pvt. Ltd. v. Shreeved Consultancy LLP and Ors., 2020 SCC Online Del 2072;*
- d) Vidhi Electrical and Engineering Co. v. C & S Electric Ltd., 2022 SCC Online Del 1429;*
- e) Manhar Sabharwal v. High Court of Delhi & Ors. in W.P. (C) 15091/2023;*



f) State of Uttar Pradesh v Roshan Singh, (2008) 2 SCC 488;

g) Rajeev Wadhawan & Anr. v. Ranjan Wadhawan & Anr. CS(OS) 544/2022.

5. On the other hand, learned counsel for defendant submitted that he had filed the written statement with a delay of 28 days from the statutory period of 30 days from the date of effective service. The defendant received summons of the present suit on 16.09.2023 when he was not at his home but he was out of station. He came back to Delhi on 30.09.2023 and thereafter immediately, he consulted with his lawyer and filed the written statement through online mode but due to some defects, the same was re-filed on 07.11.2023. The delay was neither arbitrary nor intentional. Learned counsel further submitted that there is no bar to file the application for condonation of delay after the period of 120 days or after the filing of application for striking off the defence of the defendant. No any prejudice will be caused to the opposite party if the written statement is allowed to be taken on record. The application for striking off the defence of the defendant is without any merit and is liable to be dismissed. The delay in filing written statement may be condoned and written statement may be taken on record. Learned counsel also referred the case law i.e.

a) Shesh Nath Singh Versus Baidyabati Sheoraphuli Coop. Bank Ltd, of the Hon'ble Supreme Court of India in CA No. 9198 of 2019;

b) Raghav Sachdeva v. Gaurav Chawla, 2023 SCC OnLine Del 804;

c) Friends Motel (P) Ltd. v. Shreeved Consultancy LLP, 2020 SCC OnLine Del 2072;



d) Pushpa v. Poonam Gupta, 2024 SCC OnLine Del 2822;

e) Rajeev Wadhawan & Anr. v. Ranjan Wadhawan & Anr. CS(OS) 544/2022;

f) Bharat Kalra v. Raj Kishan Chabra, 2022 SCC OnLine SC 613.

6. I have considered the submissions of both parties and perused the records. I have also gone through the relevant case laws as well as statutory provisions. Mainly, there are two questions to be decided as to whether the application for condonation of delay is maintainable if same has been filed beyond the period of 120 days i.e. the extended period provided for filing the written statement; and whether the delay in filing the written statement is condonable.

7. It has been observed by Hon'ble Supreme Court of India in *AP Distributors and Another Vs. OK Play India Pvt. Ltd. 2022, SCC OnLine SC 1512* that in case the written statement has been filed within the extended period of 120 days, but the application for condonation of delay is not filed with the written statement but has been filed beyond the period of 120 days, then also same is maintainable and delay can be condoned. Therefore, it is clear that in the present case, even if the application for condonation of delay is not filed with the written statement but has been filed beyond the period of 120 days, the same is maintainable. Further, there is no bar in law to file the application for condonation of delay in filing the written statement after the filing of application for striking off the defence.

8. As per facts of the case and applications as well as written submissions filed by both parties, it is not disputed that the written statement



was not filed within the stipulated period of 30 days from the service of summons and same has been filed with a delay of 26 days. As per Chapter VII Rule 4 of the Delhi High Court (Original Side) Rules, if the written statement is not filed within 30 days, the time for filing the same may be extended up to further 90 days if the defendant was prevented by sufficient cause for exceptional and unavoidable reasons to file the written statement.

9. In the present matter, as per case history, the written statement was initially filed on 15.10.2023 which could not come on record due to certain objections raised on 18.10.2023. After curing the defects, the same was re-filed on 30.10.2023. Then again, defects were pointed out by the Registry on 06.11.2023 and after removing the defects, the same was re-filed on 07.11.2023 and was placed on record on 08.11.2023. As mentioned on behalf of the defendant in the application, the delay was caused because of the fact that the defendant was out of station when the summons through Speed Post delivered at home and he could collect the same only on 30.09.2023 on his return back.

10. It has also been observed by Hon'ble Supreme Court of India in ***Bharat Kalra v. Raj Kishan Chabra, 2022 SCC OnLine SC 613*** that delay in filing written statement can be compensated with cost but denying the benefit of filing the written statement is unreasonable.

11. Keeping in view the entire facts and circumstances of the case as well as the relevant statutory provisions and case laws, the delay in filing the written statement on behalf of the defendant stands condoned subject to a



cost of Rs. 8,000/- to be given to the opposite party within one week, on sharing the necessary particulars.

12. Hence, the captioned IA No. 5694/2024 stands allowed and **disposed of** and captioned I.A. No. 4485/2024 stands dismissed and **disposed of**.

13. Put up for completion of pleadings in accordance with law and thereafter for completion of process of filing of Joint Document Schedule in terms of **Rule 7A of Chapter VII of The Delhi High Court (Original Side) Rules, 2018** physically by plaintiffs after getting it signed from defendant, admission / denial of documents and marking of Exhibits in accordance with law on 06.02.2025.

14. Documents, if e-filed be filed physically by parties so as to mark the Exhibits.

DR. JAGMINDER SINGH (DHJS)
JOINT REGISTRAR (JUDICIAL)

SEPTEMBER 24, 2024/sms

Click here to check corrigendum, if any