



\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 823/2023**
AMAR PARKASH NAGPAL

.....Plaintiff

Through: Mr. Nipun Bhardwaj, Adv.

versus

ISH BATRA AND ORS.

.....Defendants

Through: Ms. Shalini Gandharva, Mr. Lalit Gandharva, Mr. Sushil Kumar, Advs. for D1 & 2 (M: 8851729254)
Mr. Suryadev Kaushik, Mr. Vineet Maheshwari, Advs. for D3
Mr. Bharat Gupta, Mr. Saurabh Khanijon, Advs. for D4 / DDA

CORAM:

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

ORDER

%

21.10.2024

I.A. No. 24913/2023(u/O XXXIX R 1 & 2)

1. Reply filed by defendant no. 1 & 3.

I.A. No. 42719/2024(by defendant no. 3 for condonation of delay of 47 days in re-filing the I.A. No. 42718/2024)

2. Arguments heard.

3. It is submitted by learned counsel for applicant that application for condonation of delay in filing of the written statement could not be filed within the stipulated period due to the inadvertent reasons. Learned counsel

CS(OS) 823/2023

Page No. 1 of 7



further submitted that when the matter was listed before the Hon'ble Court on 22.07.2024, only then the applicant came to know that application for condonation of delay was not on record. Thereafter, applicant found that the application was lying under objections. Due to various other documents, proof of service could not be placed along with the said application. The objections were raised on 01.06.2024 and due to Court holidays in the month of June, the objections could not be removed. Therefore, the delay was occurred in re-filing the application. Therefore, same may be condoned and application for condonation of delay may be taken on record.

4. Learned counsel for the plaintiff opposed the application. It is further submitted by learned counsel that there is no any reasonable ground to file the present application with such a delay. The application for condonation of delay has been filed beyond the statutory period of filing the written statement and therefore, same is not maintainable. Present application is without any merit and is liable to be dismissed.

5. I have considered the submissions of both the parties and perused the record. The captioned IA is only for condonation of delay in re-filing the application for condonation of delay in filing the written statement.

6. 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.

7. In view of the aforesaid case law as well as facts and circumstances of the case, it would be appropriate if the delay in filing the application for condonation of delay is condoned and the application for condonation of delay is heard on merit.

8. Hence, the delay in re-filing the application for condonation of delay stands condoned. The captioned IA allowed and **disposed of**.

I.A. No. 42718/2024(by defendant no. 3 for condonation of delay of 27 days in filing the written statement)

9. Arguments heard.

10. Learned counsel for defendant no. 3 submitted that he had entered his appearance in this case on 19.03.2024 and the time was granted to him to file the written statement as per law. Earlier the summons were received by the wife of applicant on 11.03.2024 on which the next date was wrongly mentioned as 21.03.2024 instead of 19.03.2024. On that day, applicant came to know that the summons were earlier also served through WhatsApp but he could not earlier go through the same and therefore, further time was required to inspect the documents. Meanwhile, mother-in-law of the applicant was hospitalised and sufficient time was consumed to take care of her. The time was also consumed to locate the various documents and to prepare the written statement after discussion with the counsel. The delay was neither intentional nor deliberate. Therefore, same may be condoned



and application may be allowed.

11. On the other hand, learned counsel for plaintiff opposed the application. He submitted that there is no reason to justify the delay. The delay is beyond the given statutory period. The defects were not removed by the applicant within the stipulated period. The applicant was served through WhatsApp on 12.01.2024. He had failed to file the written statement in accordance with the Delhi High Court (Original Side) Rules. Therefore, the application is liable to be dismissed and right of defendant no. 3 to file written statement may be closed.

12. I have considered the submissions of both the parties and perused the records. As per the applicant, he has been served on 11.03.2024 and filed the written statement on 08.05.2024 and therefore, there is a delay of only 27 days. However, as per record, the defendant no. 3 was served through WhatsApp on 12.01.2024 along with documents. Therefore, his initial 30 days to file written statement were expired on 11.02.2024. He had initially filed the written statement on 08.05.2024 i.e. after about 118 days from the date of service. As per case history, the defects were raised on 13.05.2024 and the written statement was re-filed on 14.05.2024. Thereafter, further defects were raised on 15.05.2024 and written statement was re-filed on 27.05.2024. Then again defects were raised on 28.05.2024 and the written statement was re-filed on 31.05.2024. Further defects were raised on 04.06.2024 and same was again re-filed on 19.06.2024. It shows that the defects were removed every time within 30 days from the dates of raising of the defects by the Registry. However, if the date of service is accepted



through WhatsApp i.e. 12.01.2024, then no doubt the written statement has been filed beyond 90 days but within 120 days.

13. Keeping in view the entire facts and circumstances of the present case and the relevant rules, the delay in filing the written statement with affidavit of admission / denial on behalf of defendant no. 3 stands condoned subject to a cost of Rs. 4,000/- to be given to the opposite party.

14. The captioned IA allowed and **disposed of**.

I.A. No. 34849/2024(by defendant no. 4 for condonation of delay of 168 days in filing the written statement)

15. Arguments heard.

16. It is submitted by learned counsel for applicant / defendant no. 4 that the written statement could not be filed within the given period of 30 days from the date of service as the comments from the department were sent only on 15.07.2024 i.e. after more than six months from the date of service. Therefore, certain time was consumed for preparing the written statement and further for approval of the same. The delay is neither intentional nor deliberate. Hence, same may be condoned.

17. On the other hand, learned counsel for plaintiff opposed the application. It is submitted by learned counsel that the written statement filed by defendant no. 4 is hopelessly time barred. The defendant had failed to file the written statement within the statutory period provided by the Delhi High Court (Original Side) Rules. There is no reason to justify the delay. Hence, the application may be dismissed and right of defendant no. 4 to file written statement may be closed.



18. I have considered the submissions of both the parties and perused the records. It is not disputed by both parties that service was effected on 08.01.2024 and written statement was filed on 23.07.2024. As per the statutory time limit, written statement was to be filed by defendant no. 4 within 30 days i.e. till 07.02.2024. His time may be extended for justifiable reason for further 90 days i.e. up to 06.05.2024. However, the written statement was not filed by defendant no. 4 even within the extendable period of 120 days. The same was filed only on 23.07.2024 i.e. after about 178 days from the date of service which is not permissible as per the Rule 4 of Chapter VII of Delhi High Court (Original Side) Rules.

19. Moreover, there is no justifiable reason for such a long delay. The ground that delay was caused as comments were received from the department after about more than six months from the service, is without any merit. There is no any proviso in the relevant rule of the Delhi High Court (Original Side) Rules for filing the written statement by any Government department like applicant DDA. The contention raised by learned counsel that Government departments usually take long time in documentisation, is also without any merit. If delay is caused in the official procedure, then it is upon the concerned department to do the needful or to fix the timeline to complete the procedural formalities.

20. The application moved on behalf of defendant no. 4 / DDA is without any merit and same stands dismissed.

21. The captioned IA stands **disposed of**.



CS(OS) 823/2023

22. Written statement with affidavit of admission / denial has been filed filed by defendant no. 1. Written statement by defendant no. 3 be taken on record accordingly.

23. As per learned counsel for defendant no. 4, he has already filed the written statement with affidavit of admission / denial, documents and application for condonation of delay. Written statement on behalf of defendant no. 4 is not taken on record in view of the order in I.A. No. 34849/2024. Right to file written statement on behalf of defendant no. 4 stands closed.

24. Written statement has not been filed by defendant no. 2 & 5.

25. Let the pleadings be completed in accordance with law for 26.11.2024.

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

OCTOBER 21, 2024/sms

Click here to check corrigendum, if any