

18.08.2025

Present : Sh. Manish Dua, Ld. Counsel for plaintiff through VC (video is not on).
Sh. K. K. Luthra, Ld. Counsel for defendant no. 1 through VC.
Sh. A. K. Pathak, Ld. Counsel for the defendant no. 2 through VC.

Ld. Counsel for the plaintiff submits that no written statement has been filed on behalf of defendant no. 1 till date. He further submits that although a written statement has been filed by defendant no. 2, the same was filed beyond the prescribed period of limitation. An application seeking condonation of delay in this regard is pending. Counsel for the plaintiff states that he does not wish to file any reply to that application.

Order on Application under Order VIII Rule 1 r/w Section 151 CPC (Condonation of Delay).

Ld. Counsel for defendant no. 2 submits that the plaint was accompanied by voluminous documents, and considerable time was required for their verification. He further submits that there has been a delay of only about 41 days in filing the written statement. It is also submitted that defendant no. 2 resides at Ludhiana, and therefore, delays occurred in communication and obtaining proper instructions.

The plaintiff opposes the application, arguing that no sufficient cause has been shown, and that mere tracing and verification of documents cannot constitute a valid ground for condonation of delay.

I have heard the rival submissions of both sides and perused the record along with relevant provisions of law and judicial precedents.

As per the postal record, summons were duly served upon defendant no. 2 on 23.01.2025. The written statement was filed on 07.04.2025. Under Order VIII Rule 1 CPC, the prescribed period for filing a written statement is 30 days from service of summons, extendable up to 90 days, and in

some circumstances, even beyond that period where sufficient cause is shown.

The Hon'ble Supreme Court in *Kailash v. Nanhku* [(2005) 4 SCC 480] held that the provision of Order VIII Rule 1 is directory, not mandatory, and that the court has discretion to allow filing of a written statement even after expiry of 90 days.

In the present case, the delay is of about 42 days, meaning the written statement has still been filed within 90 days of service of summons. Courts have consistently emphasized that procedural law is a handmaid of justice. A short delay, if reasonably explained, ought not to deprive the defendant of the right to contest the suit. Any prejudice to the plaintiff can be compensated by awarding costs.

Accordingly, in the interest of justice, the delay in filing the written statement on behalf of defendant no. 2 is condoned, subject to payment of costs of Rs. 2,000/- to the plaintiff. The written statement is taken on record, subject to the aforesaid cost.

Application disposed of accordingly.

Coming to defendant no. 1, it is noted that despite opportunity and even after imposition of costs of Rs. 1,000/- on the last date of hearing, the written statement has not been filed. Ld. Counsel for defendant no. 1 again seeks adjournment to file the same along with an application for condonation of delay. Although such conduct is not appreciable, in the larger interest of justice, one final opportunity is granted to defendant no. 1 to file the written statement along with application for condonation of delay, subject to further costs of Rs. 1,000/- payable to the plaintiff.

Put up for further proceedings on **09.10.2025**.

(VIKAS GARG)
District Judge-05(East)
Karkardooma Courts, Delhi-18.08.2025