

26.11.2024

Present : Ms. Nimisha Sharma, Ld. Counsel for the plaintiff
through VC.

Mr. Anupam Kirti, Ld. Counsel for the defendant.

Written statement, application for condonation of delay, documents and vakalatnama are filed by Ld. Counsel for the defendant.

Replication has been filed by the plaintiff.

The application of the defendant under Order 8 Rule 1 read with Section 151 of CPC is taken up for consideration.

It is stated in the application that there was a delay of 89 days in filing of written statement. It is submitted that written statement was filed on 27.09.2024.

It is averred that summons were issued on 01.06.2024 and were delivered to the security guard of the defendant without intimation to the concerned official.

It is averred that it was only a week before 05.08.2024 when the duty of the security staff changed and while searching parcels, summons were found lying with the guard.

It is submitted that thereafter, the advocate was informed to appear before the court and seek time for filing of written statement.

It is pleaded that certain information had to be confirmed and account reconciliation was required from the bank and this took some time. It is stated that there were several communications between the parties which were required for preparation of written statement.

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It is submitted that due to the above reasons, written statement could not be filed within the prescribed time period. It is prayed that the delay of 89 days be condoned.

Reply to the application has not been filed. However, Ld. Counsel for the plaintiff has submitted that she is prepared to address arguments. She has opposed the application.

Arguments have been heard. Record have been perused.

On 05.08.2024, Ld. Counsel for the plaintiff had filed tracking report of the Postal Department. As per the tracking report, summons were served upon the defendant on 01.06.2024.

It has not been denied by Ld. Counsel for the plaintiff that written statement was e-filed on 27.09.2024. If that is so, there is a delay of around 57 days in filing of written statement and not 89 days as is stated in the application.

It is claimed by the defendant that since summons were delivered upon the security guard, it could not reach the concerned official of the defendant company immediately and was found much later, which caused delay in filing of written statement.

Order 5 of CPC provides that where the defendant is not within the local limits of jurisdiction of the court, summons are to be served upon an agent empowered to accept service.

As per the tracking report filed by the plaintiff, summons were served upon one Harish who was a security personnel. Security personnel is not an agent empowered to accept summons.

Even otherwise, there is not much delay in filing of

written statement. This court is of the opinion that cases should preferably be decided on merits by granting an opportunity to the defendant to put forth his defence. In case the application is not allowed, irreparable injury may be caused to the defendant since the defendant will not be able to put forth its defence and it will put a quietus on a valid defence. On the other hand, the plaintiff can be compensated in monetary terms for the delay.

In the case of Kailash Vs. Nanhku AIR 2005 SC 2441, the Hon'ble Supreme Court held that the purpose of providing time schedule for filing of written statement under Order 8 Rule 1 of CPC is to expedite and not to scuttle the hearing. It was noted that the provision spells out a disability on the defendant. However, it was held that it does not impose an embargo on the power of the Court to extend the time for filing of written statement beyond the time schedule provided under Order 8 Rule 1 of CPC.

In the case of Kusum Vs. Kanchan Devi AIR 2005 SC 3304, where there was a delay of around 210 days in filing of written statement, the Hon'ble Supreme Court held that while justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried. Following was also held by the Hon'ble Supreme Court:

“6. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation.”

In the case of Desh Raj Vs. Bal Kishan AIR 2020 SC 621, the Hon'ble Supreme Court held that there was no justification for not filing the written statement within the prescribed time period. It expressed its inclination to dismiss the appeal, however, took a lenient view and took the written statement on record subject to payment of cost of Rs.25,000/-.

For the above reasons, the application of the defendant under Order 8 Rule 1 read with Section 151 of CPC is allowed and delay in filing of written statement is hereby condoned subject to payment of cost of Rs. 5,000/- to be paid by the defendant to the plaintiff. Let the cost be positively paid on the next date of hearing. Subject to payment of cost, the written statement is taken on record.

Let affidavits of admission and denial of documents and proposed issues be filed by the parties by the next date of hearing after supplying advance copy to the opposite party at least 15 days prior to the next date of hearing.

To come up for framing of issues on 10.02.2025.

(Shirish Aggarwal)
District Judge-03
Patiala House Courts, New Delhi
26.11.2024