

02.11.2022

Present : Sh. Sidhart Khandewal, ld counsel for plaintiff.

Sh. Adamay Pal, ld counsel for defendant with
defendant.

Counsel for the plaintiff stated that he is ready to
make submissions on the application without any formal reply.

Submissions are heard on application under Order 9
Rule 7 CPC.

Put up for orders on the application for post lunch
session.

At 03:05 PM

Present: None.

As per case record, the suit was received on
assignment and summons were issued to the defendant vide order
dated 13.07.2021. It was ordered that the defendants be served
through all modes including Whatsapp and Emails. On
06.09.2021 none appeared for the defendants and the counsel for
the plaintiff filed affidavit in support of proof of service of
defendants on Whatsapp. The court finding that there is still time
to file written statement adjourned for 28.10.2021. On the
adjourned date none appeared for the defendants as such they
were proceeded ex parte and matter was adjourned for
28.02.2022 by the ld Predecessor of this court for ex parte
evidence. On 28.02.2022 written statement was filed on behalf of

defendant alongwith the present application.

It is submitted on behalf of defendant that after receiving the notices in the suit they appointed one counsel and instructed him to appear on 28.10.2021 and they instructed him to prepare their written statement. It is submitted that thereafter on 20.10.2021 they were called by the counsels at Rohini Courts and their signatures were procured on the written statement and they were informed by the counsel that the hearing on 28.10.2021 will be held through video conferencing and they need not come to the court. It is averred that on 28.10.2021 due to some unforeseen circumstances the counsel for the defendants was not able to appear before the court and consequently they were proceeded ex parte. It is averred that the counsel was approached and he informed that due to ill health he was not able to appear before the court and at that time they were not having any knowledge about the order. It is averred that later on the defendant upon inquiry came to know that the counsel has expired and they approached new counsel and gain knowledge about the order dated 28.10.2021. It is averred that the absence on the account of defendant was neither intentional nor deliberate and that the period of limitation was ordered to be excluded by the Hon'ble Supreme Court of India vide order dated 10.01.2022.

On the other hand the application is opposed by the counsel for the plaintiff that no details of the earlier counsel have been mentioned and the defendant have concocted the story of preparation of the written statement and non appearance of the counsel. It is submitted that defendants were duly served with the summons and deliberately chose not to file the written statement in time only with a view to delay the matter.

It is settled law that a liberal approach be taken by the court while dealing with the applications amounting to condoning the delay and the court should make endeavor to decided the lis between the parties on merits. During the period when defendants were served and were proceeded ex parte the order of extension of limitation period and directions not to pass adverse orders due to Covid-19 were in existence. Considering the totality of the facts, the application of defendants is allowed and the written statement as filed on 28.02.2022 is taken on file.

Put up for replication if any, filing of documents in original, their admission/denial, settlement of issues on **15.02.2023.**

(SUNIL CHAUDHARY)
ADJ-04, North West,
Rohini Courts, Delhi
02.11.2022