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CS DJ 394/2021

Sunil Kumar Vs Krishan & Anr

06.06.2022

Present: None.

Submissions have been heard on the application moved by the defendants under Order 37 rule 3 (7) read with 151 CPC and Section 5 of Limitation Act, 1963.

By way of present application, the defendants are seeking condonation of delay in filing the application for grant of leave to defend the suit and to take the same on file to be decided on merits. It is the contention of the defendants that defendants have appeared in the matter and have filed their application for leave to defend after being served with summons for judgment, however the application was filed only in March 2022 whereas they were to file the application within 10 days from 15.11.2021. The delay of 106 days in moving the application is sought to be condoned with the submissions that earlier counsel assured that needful shall be done when they approached him with the copy of summons and annexures and they were told that normal working of the court and physical filing of the document is yet to be restored and as and when the filing is resumed and they are

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required, they shall be informed. It is the contented that the defendants being rustic persons believe the legal advice given to them by the counsel. It is submitted that the delay is neither intentional nor malafide. Reliance is placed in support of the plea on the orders passed by Hon'ble Supreme Court in matter WP (Suo Moto) 3/2020 by which the limitation period was suspended from time to time.

On the other hand, the application is opposed by the counsel for the plaintiff with the submissions that the defendants are required to give the reasons for delay of each day and they cannot allege inaction at the part of counsel and cannot take benefit of ill advice. The reliance is placed upon the case of Lingeswaran Etc Vs Thirunagalingam, 2022 LiveLaw (SC) 227, M/s OK Play India Pvt Ltd Vs M/s A P Distributors & Anr, CM (M) 346/2020, decided on 17.08.2021 by Hon'ble High Court of Delhi and Bharat Kalra Vs Raj Kishan Chabra, CM (M) 429/2021, decided on 12.08.2021 by Hon'ble High Court of Delhi.

It is the contention of the Ld. Counsel for defendants that aforestated case law is not applicable to the facts of the present case as in the said cases the limitation period had already expired and it is observed that the suspension of limitation period in the case in which the period of the limitation has already expired will not be available to the party. He in support of his contention placed reliance upon the case of Prakash Corporates Vs Dee Vee Projects Limited, Civil

Appeal No (s) 1318 of 2022, decided on 14.02.2022 by Hon'ble Supreme Court and Sunil Kumar Gupta Vs Vatsal Mitta, CM (M) 130/2022, decided on 08.03.2022 by Hon'ble High Court of Delhi.

In the case of M/s Okay Play India Pvt Limited, the written statement was required to be filed by 22.02.2019 which was filed on 26.02.2019 with a delay of four days and the Hon'ble High Court set aside the order passed by the Court taking the same on file directing it to be taken off the record. In the case of Bharat Kalra, the summons were served upon defendant on 11.01.2020 and no written statement was filed until 20.08.2020. The orders of the trial court declining to take the written statement on file has been upheld with the observation that in the absence of any cogent explanation forthcoming for the inaction of the defendant till 20.08.2020, the application under Order 8 rule 1 CPC has rightly been dismissed. The Hon'ble High Court of Delhi has also considered in this case the orders passed by the Hon'ble Supreme Court in WP (Suo Moto) 3/2020, by which the period of limitation in filing the petitions/applications/suits/appeals/all other proceedings, irrespective of period of limitation prescribed under the General and Special Law was extended with effective from 15.03.2020 till further orders.

The facts of the case of Prakash Corporates are sparely applicable to the facts of the present case. The summons for judgment were served upon the defendants on 15.11.2021, as such, the

period was under suspension for applying the leave of the Court to defend the suit. The application seeking leave of the Court to defend the suit has been filed prior to withdrawal of the said suspension, as such, the application is within limitation. The application stands disposed off accordingly and the matter is adjourned for arguments on leave to defend application for **12.09.2022**.

(SUNIL CHAUDHARY)
ADJ-04/North-West
RHC/Delhi 06.06.2022