

**IN THE COURT OF SH. RAMESH KUMAR-II,
ADDITIONAL DISTRICT JUDGE-01, SHAHDARA
DISTRICT, KARKARDOOMA COURTS:
DELHI**

CS No.112/2022

In the matter of:-

Mr. Subhash Mukhia

.....Plaintiff

Versus

Mr. Amit Kumar

.....Defendant

01.03.2024

ORDER

Vide this order, I shall dispose off the application of the defendant under Section 5 of the Limitation Act for condonation of delay in filing of written statement.

The plaintiff has filed reply to the present application denying all the assertions made therein and has prayed for dismissal of the said application.

Arguments on this application were heard on behalf of both the parties.

During the course of arguments, ld. Counsel for defendant submitted that the defendant had appointed his counsel on 12.07.2022 but the defendant was not able to appear before the court due to Stomach infection hence time was granted for 15 days to file the written statement. Ld. Counsel for defendant

further submitted that counsel has filed the written statement on 10.11.2022, inadvertently without condonation of delay with written statement and on 19.11.2022, defence of the defendant has been struck off due to non filing of application for condonation of delay. Ld. Counsel for defendant further submitted that on 12.07.2022 as well as in the month of July the defendant was not well as he was suffering with stomach infection and viral fever, so defendant was not able to communicate properly with his counsel regarding preparation of written statement. Ld. Counsel for defendant further submitted that after that the paternal aunt of the counsel passed away as she was cancer patient, hence counsel for defendant was not able to prepare written statement. Ld. Counsel for defendant further submitted that thereafter counsel sudden got pain in stomach of gall bladder stone and on 08.10.2022 she admitted and operated in RG Stone in Pitampura due to which the counsel was unable to sit properly for a month. Ld. Counsel for defendant further submitted that due to the aforesaid reasons, the counsel for defendant could not file the written statement within time and the delay in filing the written statement is neither intentional nor willful but due to the aforesaid reasons. Therefore, ld. Counsel for defendant requested to allow the present application, in the interest of justice.

Per contra, ld. Counsel for plaintiff vehemently urged that the defendant was served with the summons on 25.04.2022 and written statement was filed on 10.11.2022 without application for condonation of delay which means that the written statement was filed after delay of more than 195 days which is well beyond 90 days of delay as prescribed by law. Ld. Counsel

for plaintiff further submitted that the present application is hopelessly barred by law of limitation because defence of the defendant was closed on 19.11.2022, whereas the present application was filed in the month of March 2023 which means that the present application is hopelessly barred by law of limitation therefore, the present application is liable to be dismissed. Ld. Counsel for plaintiff further submitted that after 30 days of passing the order by this court the remedy is lies before Hon'ble High Court of Delhi. Ld. Counsel for plaintiff further submitted that the instant application is liable to be dismissed because the present application is not filed under the proper provisions of law, further the supporting medical documents are also not relevant time period because there is no justification of the period from 25.04.2022 till 10.11.2022. Ld. Counsel for plaintiff further submitted that the medical documents are not matched with the relevant time period because OPD slip of defendant is filed which is only for 12.07.2022 and thereafter, no documents is filed for further period. Ld. Counsel for plaintiff further submitted that the medical documents of maternal aunt of counsel are filed for the year 2021 which cannot be said to be related for the period in question and medical document of counsel of defendant is for 09.10.2022 whereas WS was filed on 10.11.2022 without any application for condonation of delay, therefore, there is no justification is given in the said application and as such he requested to dismiss the application of the defendant with cost.

I have heard the arguments and perused the record and given my consideration to the submissions of the parties made before the court.

A perusal of the record reveals that the defendant was served with the summons of the suit on 25.04.2022 and he filed the written statement only on 10.11.2022 i.e. after delay of about 195 days. Order VIII Rule 1 CPC provides that the defendant can file written statement within 30 days from the date of service of summons. The proviso of order VIII Rule 1 CPC provides that where the defendant fails to file the written statement within the said period of 30 days, he shall be allowed to file the same on such other date, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than 90 days from the date of service of summons. Thus, the law provides a maximum period of 90 days for filing of the written statement.

There is delay of about 195 days in filing WS on behalf of defendant which is not minor. The copy of medical treatment documents are of no avail to the defendant as the defendant has filed his OPD slip only for 12.07.2022, no medical treatment document produced after 13.07.2022; medical documents of maternal aunt of defendant's counsel are for the year 2021 and medical document of counsel of defendant is for 09.10.2022, whereas written statement was filed by the defendant on 10.11.2022 that too without any application for condonation of delay. Therefore, this court is of the view that there is no merits in the application of the defendant and same deserves dismissal outrightly. However, this court is the opinion that it would always be in the interest of justice if the matter is decided on merits instead of technicalities and delay can be condoned subject to cost.

Therefore, in view of the above discussion, the present

application of the defendant is hereby allowed, however subject to cost of Rs.25,000/- upon the defendant, out of which Rs.15,000/- be deposited with Shahdara Bar Association, KKD Court, Delhi and rest of Rs.10,000/- be paid to the plaintiff. Accordingly, order dated 19.11.2022 is recalled. Written statement filed by the defendant is taken on record.

Defendant is directed to place on record original receipt of depositing the cost of Rs.15,000/- with Shahdara Bar Association on or before next date of hearing. It is made clear that defendant shall not take any exemption of cost of Rs.25,000/- in income tax.

Application of the defendant stands disposed off accordingly.

(Typed to the dictation, directly corrected and pronounced in open court on 01.03.2024).

(RAMESH KUMAR-II)
ADJ-01/SHD/KKD COURTS
DELHI