

IN THE COURT OF SHIV KUMAR :
DISTRICT JUDGE, (WEST)-02,
TIS HAZARI COURTS: DELHI.

CS No. 253/2024

CNR No. DLWT01-002847-2024

Jitender Gandhi

..... Plaintiff

Versus

Abhinash Kumar Bariyar

.....Defendant

**Order on application for condonation of delay under section 5 of the
Limitation Act read with section 151 CPC for filing the written
statement.**

1. Vide this order, I shall decide application filed under section 5 of the Limitation Act read with section 151 CPC, for condoning delay in filing the written statement, on behalf of defendant.

2. It is averred in the application by the defendant that as per order dated 09.09.2024, the applicant was supposed to file his written statement within 30 days from the date of receiving copy of plaint, however, the defendant was unable to arrange supporting documents as the plaintiff and Sh. Anil Kishore refused to give access to the defendant to the office of the company as well as company's balance

sheet. It is further averred that due to above said fact time was consumed in arranging the above said documents and the delay on the part of defendant is neither intentional nor deliberate.

3. Reply to the above said application has been filed on behalf plaintiff and it is contended by the plaintiff that the defendant himself is a Director of the company so it is very unlikely to believe that being a Director he is not having a copy of MOA, which he has filed with his written statement.

4. It is further contended that no plausible cause has been shown by the defendant for not filing the written statement within stipulated period . The other contents of the application have been denied by the plaintiff.

5. Arguments heard. Case file perused.

6. As per order 8 rule 1 CPC, the defendant is allowed to file written statement within 30 days from the date of service of summons upon the defendant. If the defendant has failed to file written statement within 30 days then the defendant can be allowed to file written statement within 90 days from the date of service of summons upon the defendant.

7. In a case titled “Salem Bar Association Vs UOI, AIR 2005, Supreme Court 3353, Hon’ble Supreme Court has held that the provision of filing written statement within 90 days under Order 8

rule 1 CPC is directory and not mandatory. It is held that the court can allow filing of written statement beyond 90 days, if there are sufficient reasons for the delay in filing the written statement.

8. The Hon'ble Supreme Court of India in the case titled as **“Uday Shankar Triyar Vs Ram Kalewar Prasad Singh & Anr, (2006) 1 SCC, 75 Supreme court** has observed that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause to injustice. It is further observed by Hon'ble Apex court that procedure a hand maiden to justice should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use.

9. **The Hon'ble Supreme Court of India in the case titled Collector Land Acquisition, Anantnag & ... vs Mst. Katiji & Ors decided on 19 February, 1987.**

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained"

does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

10. In the present case, the defendant has not been served as his summons returned with the report, “left without given address”. But the defendant appeared through his counsel on 22.07.2024. On 09.09.2024, ld. Counsel for the defendant submits that he has not been supplied copy of plaint and accompanied documents and thereafter the same were supplied to ld. Counsel for the defendant on the said date and the defendant was allowed to file written statement within 30 days.

11. Defendant has filed written statement on 25.11.2024. The reasons mentioned by the defendant in the application regarding not able to get the requisite documents as plaintiff did not allow him to access the office of the company and inspect the documents of the company are plausible reasons for delay in filing the written statement. Moreover the written statement has been filed within 90 days from the date of supply of copy of the plaint alongwith documents to ld. Counsel for the defendant i.e. 09.09.2024.

12. Considering the law settled in abovesaid judgments that the disputed right between the parties should be decided, on merit, after giving the parties due opportunity to put their entire case before the

court and justice to any of the parties should not be denied on technical grounds, the present application of the defendant stands allowed, subject to cost of Rs. 7000/- to be paid to the plaintiff by the defendant and subject to payment of the cost, the delay in filing the written statement stands condoned.

Application stands disposed off accordingly.

**Announced in open Court
today on 10 March, 2025**

(SHIV KUMAR)
DJ-02, Court no. 127,
West Distt. THC Delhi.