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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 102/2023 & CM APPL. 3355/2023 (Stay)**

MS KALPANA SINGH

..... Petitioner

Through: Mr. B.S. Nagar, Ms. Sonam and
Mr. Shobhit Jain, Advocates

versus

M/S OCEAN NETWORK EXPRESS INDIA PVT LTD AND ORS

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

06.02.2023

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[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 07.09.2022 in CS DJ (COMM) titled '*M/s Ocean Network Express India Pvt Ltd & Ors vs. Kalpana Singh & Ors*' whereby the application under Order IX Rule 7 of CPC, 1908 filed by the petitioner/defendant was dismissed and on the basis that the written statement has not been filed within 120 days, permission to file written statement was rejected.
2. Learned counsel submits that the petitioner was proceeded *ex parte* on 21.10.2020 which fell within the exempted period in respect of the Supreme Court judgment in *Suo Motu Writ Petition No. 3/2020 'Re: Cognizance for Extension of Limitation'* during the period 15.03.2020 through till 03.10.2021.
3. Learned counsel submits that on 16.01.2021, as and when the petitioner/defendant got accessibility to the Courts, an application under Order IX Rule 7 CPC, 1908 seeking setting aside of the *ex parte*



proceedings was filed.

4. Learned counsel submits that the said application was disposed of vide order dated 07.09.2022. Learned counsel also submits that the Trial Court while rejecting the application seeking setting aside of the *ex parte* proceedings also denied the permission to file the written statement overlooking the aspect that once a party has been proceeded *ex parte* unless the *ex parte* proceedings are set aside for the relevant period, the relief seeking permission to place on record the written statement would not have arisen.

5. Learned counsel submits that despite aforesaid factual narration, coupled with the fact that the Hon'ble Supreme Court in *Suo Motu* Writ Petition No. 3/2020 '***Re: Cognizance for Extension of Limitation***' had actually granted extension of time uptill 01.06.2022, the non-consideration of the application during the relevant period had deprived the petitioner from seeking permission to file her written statement in the interregnum. On that basis learned counsel submits that the impugned order is considerably unsustainable and ought to be interfered by this Court.

6. Issue notice. Upon the petitioner taking steps within a week, notice may be served to the respondents through all permissible modes. Additionally, through learned counsel appearing for the respondents before the learned Trial Court.

7. Reply, if any, be filed within four weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.

8. List on 05.04.2023.

TUSHAR RAO GEDELA, J

FEBRUARY 6, 2023/Āj