



\$~10

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

+ CS(COMM) 39/2022, I.A. 11112/2022, I.A. 13797/2022, I.A. 16335/2022, O.A. 32/2022

SAMIR KASAL

..... Plaintiff

Through: Mr. Humraz Bir Singh, Ms. Vatsala C. Chaturvedi & Ms. Rashmi Chopra, Advocates.

Versus

PRASHANT MEHTA & ORS.

..... Defendants

Through: Ms. Shradha Maheshwari, proxy counsel for D-1.
Mr. Vishal Gohri, Advocate for D-2 to 5.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

%

25.01.2023

I.A. 13797/2022

1. This is an application filed by the plaintiff seeking condonation of delay of 09 days in filing of O.A. 32/2022.

2. For the reasons stated in the application, the delay is condoned and the application is allowed.

O.A. 32/2022

3. This appeal has been filed by the plaintiff challenging the order dated 15.07.2022 passed by the learned Joint Registrar (Judicial) directing the plaintiff to file replication to the written statement purportedly filed by defendant nos. 2 to 5. The said order reads as under:-

“Matter is taken up through physical hearing as well



as video conferencing.

As per file noting, written statement has been filed by defendant no.1. Copy supplied.

Learned counsel for defendant nos. 2 to 5 has stated that he has filed written statement today vide Dy. No. 1169578/2022 dated 15.07.2022. Soft copy of the written statement be supplied to learned counsel for the plaintiff by learned counsel for defendant nos. 2 to 5 by way of e-mail within two days.

Replication be filed as per law with advance copy to the opposite parties.

Put up for completion of pleadings on 2nd November, 2022.”

4. The learned counsel for the plaintiff submits that the summons in the suit were accepted by the defendant nos.2 to 5 through their counsel on 19.01.2022. As the written statement was filed only on 15.07.2022, the same was clearly beyond the maximum condonable period as provided under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) applicable to the commercial disputes of a specified value under the Commercial Courts Act, 2015. He submits that, therefore, the Court had no power to take the written statement on record.

5. On the other hand, the learned counsel for the defendant nos. 2 to 5 submits that there were sufficient reasons for the defendant nos. 2 to 5 to be unable to file the written statement on record within the prescribed period. He submits that the counsel for the defendant nos. 2 to 5 was unwell and had been hospitalized on 3 to 5 occasions in the interregnum.

6. In my opinion, the order dated 15.07.2022 cannot be sustained for the reason that, admittedly, the written statement was filed beyond the maximum condonable period as prescribed in Order VIII Rule 1 of the CPC. The provision of Order VIII Rule 1 of the CPC has been held to be



mandatory by the Supreme Court in ***SCG Contracts (India) Private Ltd. v. K.S. Chamankar Infrastructure Private Limited & Ors.***, (2019) 12 SCC 210. It has further been held that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record; the court has no further power to extend the time beyond the period of 120 days; the mandatory provisions of Order V read with Order VIII Rule 1 and 10 of the CPC cannot be circumvented by recourse to the inherent power under Section 151 CPC to do the opposite of what is stated therein.

7. Once the Court has no power to condone the delay beyond the maximum condonable period, the reason for delay would become irrelevant. Accordingly, the order dated 15.07.2022 passed by the learned Joint Registrar (Judicial) is set aside.

8. Written statement filed by the defendant nos. 2 to 5 would be expunged from the record and shall not be considered in future proceedings.

9. The appeal is allowed accordingly.

I.A. 16335/2022

10. By an order dated 10.10.2022, interim directions were passed against the defendant nos. 2 to 5 to maintain accounts of their earnings and expenditure in respect of the matches in the name of '*Legends League Cricket*'.

11. The learned counsels for the plaintiff and the defendant nos. 2 to 5 submit that the said interim order may continue during the pendency of the present suit. It is ordered accordingly.

12. The application is disposed of.



I.A. 11112/2022

13. The learned counsel for the plaintiff submits that as the defendant nos. 2 to 5 have complied with the orders passed by this Court, he does not wish to press this application any further.

14. The application is disposed of.

CS(COMM) 39/2022

15. As the written statement filed by the defendant nos. 2 to 5 has been expunged from the record and the defendant no.1 is supporting the case of the plaintiff, the plaintiff shall file the list of witnesses and the affidavit of evidence of its witnesses within a period of six weeks from today.

16. List before the learned Joint Registrar (Judicial) on 20th April, 2023.

NAVIN CHAWLA, J

JANUARY 25, 2023/nc