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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 140/2024

MRS YESHA SAINI AND ORS

.....Plaintiff

Through: Ms. Kirti Mewar, Adv. (through
VC).

versus

SMT VANI CHOWDHRY

.....Defendant

Through: Mr. Gajendra Sharma, Mr. Ayush
Dutt Tripathi, Advs.

CORAM:

**JOINT REGISTRAR (JUDICIAL) SH. DEVENDER
KUMAR GARG (DHJS)**

ORDER

04.05.2024

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Proceedings are being conducted through hybrid mode.

**I.A. No. 33269/2024 (by defendant for condonation of
delay of 129 days in filing WS)**

1. Further arguments on the captioned IA heard.
2. Ld. Counsel for defendant has filed the captioned IA seeking condonation of delay of 129 days in filing written statement *inter alia* stating that summons of the present suit was accepted by husband of the defendant on 05.03.2024 at residence of the defendant and after service of copy of the suit, the defendant instructed her lawyer to prepare the written statement. It is further stated that the applicant did not pass necessary instructions to her advocate for the purpose of preparing written statement, but the collection and gathering of documents/evidence, which has been referred and relied upon by the defendant



took considerable time. It is further stated that defendant had to change her erstwhile counsel and recover all the documents which she had already given to him and same took a considerable time since the erstwhile counsel was abroad for his vacation for almost a month and thus, it took a lot of time to procure the documents. It is further stated that reasons for delay in filing written statement is bonafide and unintentional and no prejudice will be caused to the plaintiff if the delay of 129 days in filing the written statement is condoned.

3. Reply to the captioned IA was filed on behalf of the plaintiff taking preliminary objections that time period for filing of written statement is provided under Chapter VII Rule 4 of the Delhi High Court (Original Side) Rules, 2018 which provides that the written statement to be filed with a period of 30 days of receipt of summons. It is further stated that the said Rule further provides that, if sufficient cause is shown, the said time for filing the written statement may be extended by a further period not exceeding 90 days “**but not thereafter**”. It is further stated that since the present application has been filed seeking condonation of delay of 129 days in filing written statement, the same is against the settled principles of law and is liable to be dismissed with exemplary costs. In parawise reply, the plaintiff denied averments made in the application and it is *inter alia* stated that the defendant has intentionally not filed the written statement within the limitation period. It is further stated that the defendant has not even given sufficient cause for such delay and has just mentioned that the change of counsel took time in



filing the written statement and such a ground is not sufficient for condoning the delay in filing the written statement. It is further stated that the delay in filing the written statement cannot be condoned in a mechanical manner. It is prayed that the present application may kindly be dismissed.

4. Perusal of order dated 16.10.2024 would show that it was submitted on behalf of defendant that the defendant did not wish to file rejoinder to the said reply of plaintiff.
5. Ld. Counsel for defendant has submitted that there is a delay of 129 days in filing the written statement. He has further submitted that due to the reasons mentioned in the application, written statement could not be filed within limitation period. He has further submitted that applicant/defendant has case on merits and the application may kindly be allowed. He has relied upon judgments i.e. order dated 09.01.2023 in CS(OS) 128/2022 titled as “Amarenra Dhari Singh vs. R.C. Nursery Private Limited”; order dated 15.01.2021 in FAO(OS) 55/2020 titled as “Tushar Bansal & Anr. Vs. Jai Ambey Traders & Ors.” and order dated 03.12.2019 in CS(OS) 245/2019 titled as “Harish Bajaj vs. HDFC Bank & Ors.”
6. Ld. Counsel for plaintiff has submitted that the present application is not maintainable as the written statement has been filed beyond 120 days from the date of service of defendant. She has further submitted that it is settled law that no written statement can be taken on record after 120 days of service of the defendant. She has further submitted that the case of defendant on merits is not be considered at this stage. She has relied upon judgments



i.e. judgment dated 23.08.2024 in FAO(OS) 102/2023 titled as “Delhi Gymkhana Club Ltd. vs. Col. Ashish Khanna SM Retd. & Ors.” and judgment dated 23.8.2024 in W.P.(C) 15091/2023 titled as “Manhar Sabharwal vs. High Court of Delhi & Ors.” as well as in W.P.(C) 15124 /2023 titled as “Chirag Sharma vs. High Court of Delhi & Ors.”.

7. I have heard argument from both the sides and perused the entire material available on record carefully.
8. In judgment titled as “**Delhi Gymkhana Club Ltd. vs. Col. Ashish Khanna SM Retd. & Ors.**” (*Supra*), Hon’ble High Court of Delhi has observed as follows: -

“21. The purpose of fixing an outer time limit under Rule 4 of Chapter VII of the DHC Original Side Rules for filing the written statement is to ensure that the delay in filing of written statement does not lead to further delay in adjudication of civil suits. The validity of this Rule having been upheld by the Division Bench in **Manhar Sabharwal (supra)**, the said Rule becomes mandatorily applicable to all suits including non-commercial suits before the Delhi High Court (Original Side). Accordingly, the Court can only extend the period of 30 days for filing of written statement by further 90 days, but not beyond the period of 120 days in total in the opinion of this Court. The language of Rule 4, Chapter VII of the Delhi High Court (Original Side) is clear when it uses the term ‘**not thereafter**’, as is seen from the text extracted above.”

9. In judgment titled “**Manhar Sabharwal vs. High Court of Delhi & Ors.**” (*Supra*), Hon’ble High Court of Delhi has observed as follows: -

“21. Section 129 CPC expressly gives the power to the High Court to make Rules, notwithstanding the provisions of the CP, meaning thereby, the High Court is in its authority to frame Rules that may be contrary to other provisions of the CPC. Therefore, relying on judicial interpretations of the provisions of the CPC, to challenge Rule 4



10.It is settled law that no written statement can be filed on behalf of the defendants beyond period of 120 days from the date of service of summons. In the present matter, it is admitted case of the defendant that written statement was filed by her after 129 days from the date of service. Thus, the present application is not maintainable.

11.The judgments relied upon by Ld. Counsel for defendant are not applicable to the facts of the present matter being distinguishable on facts.

12.Keeping in view the above said facts & circumstances and in view of the above said judgments, the undersigned has no jurisdiction to condone the delay in filing of written statement beyond period of 120 days from date of service of the defendant and hence, the application of defendant is without any merit and the same stands dismissed accordingly. Written statement and affidavit of admission/denial of documents filed on behalf of the defendant be taken off the record.

13.The captioned IA stands disposed off accordingly.

I.A. No. 34524/2024 (by defendant u/S 151 CPC seeking exemption to file original/certified/typed/legible copies of documents)

14.Ld. Counsel for plaintiff already submitted that she did not wish to file any reply to the captioned IA.

15.At joint request, re-notify the captioned IA for arguments on next date of hearing.

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I.A. No. 4191/2024 (by plaintiff for stay)



16. Perusal of record shows that written statement, affidavit of admission/denial of documents were already filed by the defendant. However, the same be taken off the record in terms of order passed today while disposing off IA No. 33269/2024.
17. An application for exemption is pending for consideration on behalf of the defendant.
18. Re-notify the present matter for further proceedings on **14th February, 2025.**

DEVENDER KUMAR GARG (DHJS)
JOINT REGISTRAR (JUDICIAL)
DECEMBER 23, 2024/v
Click here to check corrigendum, if any