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

+ **CS(COMM) 125/2021**

SHAMINDER SINGH BHATIA & ANR. Plaintiffs

Through: Mr. Vierat K. Anand, Mr. Harish Nadda,
Mr. Kumar Shashank, Mr Vikalp
Singh, Mr. Rishav Singh, Advs

versus

MR. VISHNU BHAGWAN @ BALWAN SINGH Defendant

Through: Mr. Kartickay Mathur, Adv

CORAM:

MS. VANDANA JAIN (DHJS) JOINT REGISTRAR(JUDICIAL)

ORDER

% **24.01.2023**

**IA No. 14154/2022(U/S 151 CPC filed by defendant for
condonation of delay of 148 days in filing written statement)**

Vide this order, I shall dispose of an application (u/S 151 CPC filed on behalf of defendant for seeking condonation of delay of 148 in filing of written statement.

Learned counsel for the defendant had argued that the summons of the suit were issued upon the defendant on 19.03.2021 on the address given in the Memo of Parties, however the defendant had shifted his residential accommodation to Post Dadri Toe, Tehsil Badli, Distt. Jhajjar, Haryana from the address given in the Memo of Parties and he is now residing at the new address. He had argued that in view of the change of the address of the defendant, no summons

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were ever received by the defendant.

He had further argued that the parties were known to each other for a long time and the plaintiffs were very much aware of the alternate address of the defendant. They knew that the defendant is running a school in Jhajjar known as GDK Palit Middle School, but no efforts were made by the plaintiffs to serve the defendant at the said address. He had further argued that plaintiffs did not exercise any diligence to trace the new address of the defendant and an application seeking substituted service under Order V Rule 20 CPC was moved mechanically.

Learned counsel for defendants had further argued that the plaintiffs got published only the summons of the case only in the newspaper but copy of plaint were never published and the defendant remained unaware about the filing of the present suit against the defendant. He had further argued that the defendant in another proceedings pending before the High Court of Delhi in *FAO No. 404/2015 titled as Jayaditty Palit & Anr vs Sanjay Mathur and Ors* was informed on 02.06.2022 that a suit is pending against the defendant. But no details of the present case were provided to the defendant. He had further argued that the defendant tried to locate the details of the present case and thereafter he has ascertained the details of the counsel for the plaintiffs and vide letter dated 11.07.2022, requested him to supply the complete paper book which was supplied on the very same day.

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Learned counsel has further argued that in order to file the written statement, the defendant had to rely upon various voluminous files with respect to previous litigation of the defendant with the legal heir of Major General D K Palit (Retd.) which are relevant to the present dispute. The defendant had been fighting the said litigation for almost ten years in various Courts. Learned counsel for defendant had further argued that the collection of the documents took considerable time which caused delay in filing the written statement and the same was filed on 25.08.2022. Learned counsel had further argued that in view of aforesaid discussion, it is clear that the plaintiff had duly served the defendant only on 11.07.2022 when the complete paper book was received by the defendant and therefore, there is only nine days delay in filing the written statement.

He had further argued that in case, the defendant is deemed to be served on 24.11.2021, then his limitation would start only from 28.02.2022 and the thirty days period would expire on 30.03.2022 and therefore, the application be treated as for seeking condonation of delay of 148 days. Learned counsel submitted that the application be allowed and written statement be taken on record.

On the other hand, learned counsel for plaintiffs had opposed the averments made in the application and submitted that as per the *Commercial Courts Act, 2015* the right to defendant to file the written statement stands forfeited after 120 days from the date of service, therefore the delay of 148 days sought in the alternative arguments cannot be condoned.

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He had relied upon *M/S SCG Contracts India Pvt, Ltd. v/s K.S.Chamankar Infrastruclure Pvt. Lld. & Ors (2019)12 SCC 210 and 3M Company v/s Mr. Víkas Sínha & Anr, 2022 SCC Online Del 1921.*

Learned counsel had further argued that the application for substituted service of the defendant was moved by the plaintiffs as there was no traceable address of the defendant where the summons could get delivered. He had further argued that the Hon'ble High Court vide its order dated 27.10.2021 allowed the said application while stating that the address disclosed by the defendant in the previous litigations is the last and only known address of the defendant. He had further argued that there is no challenge to the said order allowing substituted service and therefore, this argument cannot be entertained at this stage as what cannot be done directly is not permissible to be done indirectly. Learned counsel had further argued that the present application is liable to be dismissed.

I have heard the submissions of learned counsel for parties and have perused the record carefully.

In the said application, the defendant's counsel has made two fold alternative arguments. In the first version, he seeks condonation of delay of 9 days in filing the written statement after expiry of statutory period of thirty days, however in the second version/arguments, he seeks condonation of delay of 148 days in filing the written statement after expiry of statutory period of thirty

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days. The submissions made by learned counsel for plaintiffs with respect to the condonation of delay of 148 days are absolutely correct in terms of ***Chapter VII Rule 4 Delhi High Court (Original Side) Rules, 2018*** and Order V Rule 1 (i) second proviso, CPC applicable to The Commercial Suits and the judgments relied upon by learned counsel for plaintiffs. The delay of 148 days cannot be condoned.

Therefore, it is to be ascertained whether the case of the defendant falls within the first version which is yet to be discussed and considered or within the second version wherein there is no scope for condoning the delay.

Now coming to the merits of the application, the address of the defendant given in the Memo of Parties by the plaintiffs was “ *Village Aurangpur, District Jhajjar, Haryana*”. Learned counsel for defendant had taken a stand that the defendant had shifted his address from *Village Aurangpur, District Jhajjar, Haryana* to *Post Dadri Toe, Tehsil Badli District Jhajjar, Haryana* and therefore, he never received the summons of the suit. There is no dispute to the fact that the defendant was residing on the address given in the Memo of Parties. While perusing both the addresses, it is noticed that the house numbers are not given in both the addresses. In the address given in the Memo of Parties, the name of the Village is mentioned as Aurangpur whereas in the new address given in the captioned IA, the name of the village has not been mentioned but the Post and the Tehsil has been mentioned. In the address given in the Memo of Parties, the name of Post and Tehsil has not been mentioned. No

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proof has been produced by the defendant to show whether the new address given by him is a different address or that he is residing therein. The application is completely silent with respect to the date when the earlier address was left by the defendant or the date when the defendant started residing at his new address, if so mentioned in the IA. The judicial notice is taken of the fact that Village Aurangpur is under Post Dadri Toe and Tehsil Badli in Distt. Jhajjar. In the absence of any documents substantiating his averments with respect to the change in the address, and concealing the dates of shifting to another address if any, this submission of the defendant's counsel is liable to be turned down. The previous reports on the address given in the Memo of Parties have been perused. The summons have been received back unserved through speed post with the report "not residing at the given address and the new address not known".

As far as the alternative address of the School allegedly run by defendant is concerned. The plaintiff in para No.5 of his plaint has averred that defendant represented to the plaintiff that he was managing an educational institution namely GDK Palit Middle School, Aurangpur, Jhajjar, Haryana, on behalf of Major General Palit. It is pertinent to mention here that this school is also stated to be in village Aurangapur which he alleged to have left. He has not filed any document to show his post in the said school or that it was his place of work or that he was working for gain there. Just a passing reference to any address would not make it a address relevant for the purposes of correspondence. In the very said para, it is also mentioned

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in the plaint that he was working with Major General Palit in the capacity of care taker/manager of his assets. Therefore, this address can be taken to be an address for correspondence with Major General Palit and not with defendant.

Even in the agreements and Memo of Understanding placed on record and duly signed by defendant, his address is the one given in the Memo of Parties and not the School's address.

Learned counsel for defendant during the course of the arguments has stated that he came to know about the pendency of this case in a proceeding under FAO No. 404/2015 on 02.06.2022. No document has been placed on record to show that in FAO proceedings this new address was given by the defendant. Therefore, this alternate address cannot be taken to be that of defendant on which plaintiff ought to have served the defendant.

The perusal of the service reports on the earlier address would show that defendant was not served on the given address.

Since the service was not effected at the address given in the Memo of Parties, defendant was served by way of publication. It is to be seen now as to how defendant got the information of pendency of the present suit. The defendant in his application has mentioned that he came to know about this suit during the proceedings in the case bearing FAO No. 404/2015 before Hon'ble Court between him and one other party and he was informed about the pendency of the present suit. The application has been perused carefully. It has nowhere been disclosed as to who gave the information about the

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pendency of the present suit. Admittedly, the plaintiff is not a party to those proceedings. Therefore, these submissions are not trustworthy. Counsel for defendant while addressing the arguments had also stated that though he came to know about the pendency of the present suit on 02.06.2022 in the said FAO, but details of the case were not provided. It is further stated that he tried to ascertain the details of counsel for plaintiff. There is not even an iota of word as to how the details of counsel for plaintiff were procured by the defendant. No name has been disclosed as to who gave the clue or who provided the information about the present suit which enabled the defendant to get the copy of the paper book from the plaintiff's counsel to file the written statement thereafter.

The version of the defendants with respect to the knowledge of the suit from FAO No 404/2015 on 02.06.2022 is completely an afterthought in order to take the advantage of the period of limitation so as to file the written statement.

The defendant was duly served by way of publication which was duly accepted as valid service by Learned Predecessor.

In the rejoinder to the reply of the plaintiff, defendant has tried to invoke order IX Rule 7 CPC. Rejoinder has come on record after case was reserved for orders. Nonetheless, this provision does not come to the rescue of defendant at all. Undoubtedly, defendant can join the proceedings from any stage, but that does not give him a right to undo what has been left earlier. He can't read the provision to his advantage in such a manner that he can place his written statement on

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record, which is clearly beyond the period of limitation. Therefore, reliance on this provision is misplaced.

Written statement has been filed after expiry of 120 days from the date of service through publication. Therefore, written statement filed by defendant is beyond the period of limitation. Hence, application filed by defendant stands dismissed. Written statement is taken off the record.

IA stands disposed off.

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Affidavit of evidence of plaintiffs' witnesses be filed physically within four weeks from today positively with advance copy to opposite side.

Matter is listed for PE on 16.05.2023.

**VANDANA JAIN (DHJS)
JOINT REGISTRAR(JUDICIAL)**

**JANUARY 24, 2023
SK**

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