



\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 328/2022**
DIWAN SAHEB FASHION PVT LTD

..... Plaintiff

Through: Mr. Jai Sahai Endlaw, Adv. (Mobile
No.9811122114)

versus

VIJAY BHUSHAN & ORS.

..... Defendant

Through: Mr. Sanjeev Mahajan, Adv. for D-1 to
9
Mr. Ashwin Kumar D.S. Adv. for D-
10 (appeared through VC) (Mobile
No.9886849918)

CORAM:
JOINT REGISTRAR (JUDICIAL) MS. SHUCHI LALER,
(DHJS)

%

ORDER
28.10.2022

I.A.No.8914/2022 (under Order XXXIX Rule 1 & 2 CPC) &

I.A.No.8915/2022 (under Section 151 CPC filed by the plaintiff)

1. No reply to the captioned IAs have been filed.
2. Pleadings be completed as per law.

**I.A.No.15400/2022 (under Section 151 CPC filed on behalf of
defendant no.10 seeking exemption from filing of apostilled
affidavit)**

3. Heard. Subject to all just exceptions, the captioned IA is allowed.



Let the apostilled affidavit be filed within four weeks.

4. IA stands disposed off.

I.A.No.15399/2022 (under Order VIII Rule 1 CPC r/w Rule 4 of Chapter VII of Delhi High Court (Original Side) Rules, 2018 and Section 5 of Limitation Act r/w Section 151 CPC seeking condonation of delay in filing the written statement by defendant no.10)

5. Issue notice. Learned counsel for plaintiff accepts notice and submits that he does not wish to file reply to the captioned IA. He has addressed arguments straightaway.

6. Arguments heard. Record perused.

7. Order VIII Rule 1 CPC provides that the written statement shall be filed within 30 days from the date of service of summons upon the defendant. The proviso to Rule 1 enables the Court, for reasons to be recorded in writing, to permit the defendant to file a written statement after 30 days but in any case, within 90 days from the date of service.

8. Admittedly, the written statement was not filed within the prescribed period of 30 days, which necessitated the filing of present application, however, the written statement has been filed within the extended period of 90 days. In the present application, it is stated that the defendant no.10 is a resident of Sydney, Australia, so, his counsel had sent the copy of plaint and document to defendant no.10, who, after examining the plaint and the documents instructed his counsel to prepare written statement. Thereafter, defendant no.10 duly signed it and the affidavits were notarized in Australia, which took time.



9. As defendant no.10 is a resident of Sydney, Australia and the entire set of pleadings and documents had to be sent to him at Australia, the affidavits were attested at Australia and thereafter, were sent to learned counsel for defendant no.10, substantial time must have been consumed. Sufficient cause has been shown by defendant no.10 for delay in filing the written statement. It is well settled proposition of law that hyper technical approach is to be avoided and discretion is to be exercised by the Court to advance substantial justice. The valuable right of defendant no.10, to contest the present suit and to set up his defence in *toto*, cannot be defeated by declining to condone the delay which is less than 90 days.

10. In ***Bharat Kalra Vs. Raj Kishan Chhabra*** Civil Appeal No.3788/2022 dated 09/05/2022, the Hon'ble Supreme Court condoned delay of 193 days in filing of written statement in a non-commercial suit. Procedural laws are handmaid to justice. In the present case, when the written statement has been filed within the extended period of 90 days and sufficient cause is shown by defendant no.10, the written statement should be taken on record. Accordingly, the written statement is, hereby, taken on record.

11. IA stands disposed off in the aforesaid terms.

CS(OS) 328/2022

12. As per office note, replication to the written statement of defendant no.10 along with affidavit of admission/denial has been filed on behalf of plaintiff vide diary no.1762047/22.

13. Written statements of defendant no.1 to 10 are on record.



Replications are also on record.

14. Affidavits of admission/denial of documents are also on record.

Learned counsel for defendant no.10 submits that he wishes to file an additional affidavit of admission/denial with respect to the documents filed along with the replication. Same be filed within two weeks from today.

15. 'Joint Document Schedule' in terms of Rule 7A Chapter VII of Delhi High Court (Original Side) Rules, 2018 be filed at least a week before the next date. A hard copy of the documents and Joint Document Schedule, in addition to e-filing, be also filed.

16. Parties are at liberty to produce the original/certified copies of the documents on the next date of hearing for the purpose of admission/denial of documents.

17. Re-notify the matter for admission/denial of documents on **13th December, 2022 at 2:00pm.**

**SHUCHI LALER, (DHJS)
JOINT REGISTRAR (JUDICIAL)**

OCTOBER 28, 2022/nk

[Click here to check corrigendum, if any](#)