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

+ **CS(OS) 354/2023**

SH. SUSHIL KUMAR & ORS.

..... Plaintiffs

Through: Mr. Kunal Madan, Adv.

versus

VIJAY KUMAR GUPTA & ORS.

..... Defendants

Through: Mr. M.A.Inayati, Adv.

CORAM:

**JOINT REGISTRAR (JUDICIAL) MS. SHUCHI
LALER (DHJS)**

ORDER

03.05.2024

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**IA No. 10804/2023 u/O XXXIX R.1 & 2 CPC by
plaintiff**

1. Learned counsel for defendants had submitted on 08.01.2024 that the contents of his written statement be read as reply to the captioned IA.

**IA No. 16510/2023 u/s 10 r/w section 151 CPC for
staying the proceedings by defendant no.1**

2. Reply of plaintiff is on record. Learned counsel for defendants had submitted on 08.01.2024 that he does not wish to file rejoinder. Pleadings are complete.

IA No. 327/2024 u/O VIII R.1 CPC by defendants

3. Vide this order, the court shall decide the captioned IA of defendants for condonation of delay of 108 days in filing the written statement.

4. In the present application, the defendants have stated



that they were served on 22.07.2023 and the present suit was filed by the plaintiffs after issuance of summons of suit no. 271/2023 titled as Vijay Kumar Gupta and Ors. Vs. Susheel Kumar Gupta and Ors filed by defendants against them. It is averred that after receiving summons of the present suit, the defendant no.1 filed an application u/s 10 CPC for stay of proceedings as the matter was already subjudice in the previous suit. The plaintiffs also filed a transfer petition, hence, the defendants were expecting that the present suit would be stayed. The defendants have further stated that there were long vacations on account of Dussehra, Diwali and other festivals from 22.10.2023 to 29.10.2023 and 11.11.2023 to 15.11.2023. Moreover, during this period, the mother of defendant's counsel was unwell and was even hospitalised. Owing to the aforesaid reasons, the written statement could not be filed within the prescribed time period and a prayer for condonation of delay is, accordingly, made.

5. Plaintiffs, in their reply, have stated that dasti summons were served upon defendant nos. 1 & 4 on 14.07.2023, the defendants were also served through speed post on 18.07.2023 and the written statement has been filed beyond 120 days. The plaintiffs have claimed that the defendants could not explain the delay for non-filing of written statement from August to October, 2023 and no documents in support of the averments made in the application have been filed. The plaintiffs have averred that the defendants have failed to show any plausible and cogent reason for condonation of delay and dismissal of the present application has been prayed for.



6. Rejoinder has been filed by defendant no.1 wherein it is mentioned that the mother of learned counsel for defendants is a patient of Cardio-Pulmonary disease and her medical documents have been enclosed. It is also averred that defendant no.1 is a chronic bed ridden patient of disc slip and frozen shoulder and even medical documents of defendant no.1 have been annexed.

7. Arguments have been heard. Record perused.

8. Before advertng to the reasons for condonation of delay in filing the written statement, it is imperative to decide as to when defendants were served and what is the actual period of delay, as this court has no power to condone the delay beyond 120 days.

9. Chapter VII Rule 4 of Delhi High Court (Original Side) Rules provides for the extension of time that can be granted by the courts if the written statement is not filed within thirty days. The provision reads as under:-

4. Extension of time for filing written statement-If the Court is satisfied that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within 30 days, it may extend the time for filing the same by a further period not exceeding 90 days, but not thereafter. For such extension of time, the party in delay shall be burdened with costs as deemed appropriate. The written statement shall not be taken on record unless such costs have been paid/deposited. In case the defendant fails to file the affidavit of admission/denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted. In case, no written statement is filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement.

10. The Hon'ble Court in **Col. Ashish Khanna SM Retd. Vs. Delhi Gymkhanna Club and Ors.** CS (OS) 171/2022 decided on 22.08.2023, while relying upon the



judgment of **Ms. Charu Agarwal Vs. Alok Kalia and Ors.** O.A. No. 9/2023 dated 01.03.2023, observed that the courts have no power to condone the delay in filing the written statement beyond 120 days. Thus a maximum extension of 90 days can be granted beyond the initial 30 days and in no circumstances, can an extension beyond 120 days can be granted.

11. Defendants, in their application, claim that they were served on 22.07.2023, whereas, the plaintiffs, on the contrary, aver that all the defendants were served on 18.07.2023. Perusal of the record reveals that the present suit for partition, possession and permanent injunction was filed on 29.05.2023. Summons sent by ordinary process were received by wife of defendant no.1 and by son of defendant no.2 on 20.07.2023, defendant no.3 and defendant no.4 personally received the summons on 20.07.2023.

12. Order V Rule 15 CPC provides that if the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence, he may be served through any member of the family whether male or female, who is residing with him.

13. There is no denial by defendant nos. 1 & 2 that the summons were not received by wife and son or that they had no knowledge of the summons. In fact, the same counsel is representing all the defendants which shows that the summons were validly served upon the defendants on 20.07.2023. Learned counsel for defendants had entered appearance for the first time on 07.08.2023.

14. There is no denial and it is also borne out from the



record that written statement was filed on 10.12.2023. Having been served on 20.07.2023, the defendant should have filed the written statement within a maximum period of 120 days i.e. up to 19.11.2023 whereas it was filed on 10.12.2023. Evidently, the defendants have failed to file the written statement within the period of 120 days and any delay beyond 120 days cannot be condoned, as discussed herein above.

15. Learned counsel for defendants has vehemently urged that his case is squarely covered by the judgment of Hon'ble Supreme Court titled as **Prakash Corporates Vs. DEE VEE Projects Ltd** Civil Appeal No. 1318/2022 dated 14.02.2022. With due respect, the aforesaid judgment does not apply to the facts of the present case as in the said case, the Hon'ble Supreme Court, while relying upon the decision in *Suo Moto Writ Petition* (Civil No. 3/2020), observed that as the period of limitation for filing of written statement expired during the Covid-19 pandemic period, it was accordingly extended, which is not so in the present case. So far as the pendency of application under Section 10 CPC is concerned, the captioned IA was listed on several dates i.e. 31.08.2023, 05.09.2023, 19.09.2023, 05.10.2023 and 21.11.2023, however, no request for suspension of time for filing the written statement was ever made by the defendants.

16. As discussed herein above, the written statement in the present suit has been filed beyond the period of 120 days, this court has no power to condone the said delay. The application in hand is devoid of merits and is accordingly dismissed.



IA No. 797/2024 u/O VIII R.10 CPC by plaintiff

17. The application of defendants for condonation of delay in filing the written statement has been dismissed.

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18. As the written statement has not been filed within 120 days, the right of defendants to file written statement stands closed.

19. Learned counsels for the parties submit that the matter is listed before the Hon'ble Court on 06.05.2024. The file may be placed before the Hon'ble Court on date already fixed i.e. 06.05.2024 for further directions.

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

MAY 3, 2024/cd

Click here to check corrigendum, if any