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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 334/2024**

AMIT JAIN

.....Plaintiff

Through: Mr.Gaurav Bahl, Advocate.
versus

NARESH CHAND JAIN & ORS.

.....Defendants

Through: Mr. Manik Dogra, Sr. Advocate with
Mr.Ninad Dogra, Mr. Sandeep Das,
Mr.Dhruv Pandey, Advocates for D-
1, 2 and 6.
Mr. Alok Tiwari, Ms. Kritika Bansal,
Advs. for D-3 & 5.
Mr. Pranjit Bhattacharya, Adv. for D-
4.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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28.01.2025

I.A. 49363/2024 (under Order VIII Rule 1 of CPC)

1. In support of the averments made in the instant application, Mr. Manik Dogra, learned senior counsel appearing on behalf of defendants no.1, 2 and 6, submits that the summons in the suit were received by the said defendants on 29.05.2024. The initial thirty days' period stood expired on 28.06.2024, however, the written statement was filed within the extended permissible period of 90 days, i.e., on 24.09.2024. He, therefore, contends that the outer limit of 120 days' would have expired on 26.09.2024; and thus, the written statement filed on 24.09.2024 is well within 120 days'



period. Learned senior counsel then takes the Court through various averments made in paragraph nos. 4 to 7 of the application, and submits that due to unavoidable circumstances, the written statement could not be finalised; and thus, the delay in filing the written statement deserves to be condoned.

2. Regarding the delay in re-filing the written statement, learned senior counsel then contends that the delay was unintentional and has occurred solely due to an oversight in not placing the necessary record for filing. He further submits that the delay is not inordinate and in the interest of justice, can be condoned. He places reliance on a decision of this Court in **Narender Kumar Sharma v. Maharana Pratap Educational Centre**¹, to contend that the strict rigors of timeline in case of re-filing may be relaxed, provided the delay is not inordinate and unexplained.

3. The aforesaid submissions are strongly opposed by Mr. Gaurav Bahl, learned counsel appearing on behalf of the plaintiff.

4. Learned counsel for the plaintiff refers to Chapter IV, Rule 3 of the Delhi High Court (Original Side) Rules, 2018 (hereinafter referred as ‘the Rules, 2018’) and contends *inter alia* that in the case of defective filings, re-filing is allowed only within 7 days at a time, and total period should not exceed 30 days.

5. Learned counsel then contends that if the pleadings or documents are filed beyond the time limits prescribed under Rule 3, sub-rule (a) of Rules, 2018, i.e. 7 days at a time and within 30 days in aggregate, it must be accompanied with an application for condonation of delay. Learned counsel for the plaintiff then contends that while the reason for the initial delay in



filing the written statement is explained in the application, no reason has been provided for the delay in re-filing the written statement. He relies on the decision of the Division Bench of this Court in the case of ***Northern Railway v. M/s Pioneer Publicity Corporation Pvt. Ltd. & Anr***², and contends that the delay in re-filing has to be looked into after due appreciation of the facts and in the given case, if the delay is beyond the permissible time, the said re-filing will have to be construed as a fresh filing.

6. Learned counsel further argues that if the delay in re-filing of the written statement is not condoned, on account of non-explanation, the written statement will be deemed to have been filed beyond the 120 days period and thus, cannot be taken on record.

7. I have considered the submissions made by the learned counsel for the parties and perused the record.

8. As far as the delay in filing the written statement is concerned, the reason assigned by the applicant in paragraph no. 7 of the application clearly indicates that the counsel's mother was seriously ill and was undergoing cancer treatment. Although the applicant may not have placed on record appropriate documents, this explanation remains uncontroverted. On the contrary, the application is supported by an affidavit, making it credible and beyond the pale of doubt.

9. For the aforesaid reasons, and considering that the written statement itself was filed within the maximum window of 120 days, from the date of receipt of the summons, the delay in filing the written statement deserves to be condoned.

¹ 2018 SCC OnLine Del 13146

² 2015 SCC OnLine Del 11646



10. So far as the delay in re-filing of the written statement is concerned, the office report indicates that the written statement was placed on record on 24.09.2024. Based on the limitation and defects information available in the office record, the following description of the defects in written statement was reported to the counsel on 26.09.2024 at 03:07 P.M.

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OTHER DEFECTS INFORMATION	
ENTRY DATE	DESCRIPTION
26-09-2024 03:07	<i>Description of any other Defects: Give an undertaking on the index of the application to the effect that all parties to the litigation have been duly served. AFFIDAVIT OF SERVICE BE FILED IF THE SERVICE DONE BY EMAIL AS PER PRACTICE DIRECTION DATED 03/12/2019 OF DHC NO.68/RULES/DHC/2019. Documents, other than relevant orders, be filed separately vide separate diary number in its appropriate category and modify your application accordingly and mentioned the diary number of the same at the index after filing separately.(CH-IV RULE 10(II) OF DELHI HIGH COURT ORIGINAL SIDE RULES)./Annexure word not allowed.</i>

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11. The aforesaid defect appears to have been cured on 16.12.2024. It is, thus, seen that the delay appears to have been approximately 82 days in re-filing. The application for condonation of delay in re-filing essentially reiterates the same reasons for delay as the main application for filing the written statement. Learned counsel, during the hearing, explains that the illness of the mother of the counsel persisted beyond the September 2024, and relevant documents can be placed on record to corroborate this.

12. Under the facts of the aforesaid case, the aforementioned explanation seems reasonable, and there is no reason to doubt its veracity.

13. It is also to be noted that in the case of **Northern Railway**, as relied



upon by the learned counsel appearing for the plaintiff, the Court was considering the delay of re-filing of petition under Section 34 of the Arbitration and Conciliation Act, 1996. In the said case, the filing of the petition itself was made without payment of the court fee. This was considered to be substantive defect, and the filing was found to be *non-est* in the eyes of the law. It is under those aforesaid circumstances, that the Court took the view that the *non-est* filing would not stop the running of the rigors of limitation.

14. Moreover, in the decision of the Division Bench of this Court in the case of ***Northern Railway***, has been overruled and set aside by the Supreme Court in Civil Appeal No. 10340 of 2016. The Supreme Court, in its judgment, held that the re-filing of an application after curing defects does not amount to a fresh filing.

15. Under the facts of the present case, the filing of the written statement would essentially be governed by the provision of Order 8 Rule 1 of CPC, and the delay in re-filing will have to be considered in the context of the provisions of the Rules, 2018.

16. If Sub-Rule 3 of the Chapter IV of the Rules, 2018 are perused, it would, *inter alia*, provide that upon scrutiny, if the document/ pleading is found to be defective, the concerned Registrar, in-charge of the filing counter shall specify the objection while keeping the record of the same for its removal and re-filing within a time not exceeding 7 days at a time, and 30 days in aggregate.

17. It is thus seen that, in the instant case, the objections have been duly pointed out to the concerned respondent/defendant, and the compliance is accepted as having been made within 7 days, or, in any case, within a total



period of 30 days in aggregate.

18. The second requirement under Rule 3 sub-clause (c) is the filing of an application if the delay exceeds 30 days in aggregate or 7 days at a time, seeking condonation of delay in re-filing.

19. In the instant case, the application has, admittedly, been filed for condonation of the delay in re-filing, and the reasons mentioned in the application are further explained by way of oral submissions.

20. It is, thus, seen that the scheme of Rule 3 of Chapter 4 of the Rules, 2018, nowhere indicates that delay in re-filing beyond 30 days cannot be condoned by the Court.

21. In light of the aforementioned, it is clear that the Court has the discretion to condone the delay in re-filing beyond 30 days, as the scheme of Rule 3 of Chapter 4 of the Rules, 2018 does not preclude such a course of action. As held by the Division Bench of this Court in ***Saneh Kumar Mittal v. Sadhna Gupta***³, mere technical defects in the filing process do not render the filing *non-est*. In several cases, the defects may only be perfunctory and not affecting the substance of the application. The Court must consider whether the delay in re-filing is excusable, particularly when the defects are purely technical and do not affect the substantive aspects of the application. Whether the delay should be condoned depends on the specific circumstances of the case, including whether the applicant has demonstrated sufficient cause for failing to re-file the petition/application/written statement within the prescribed time. In such cases, the Court must exercise its discretion judiciously, balancing the interests of justice and the need for procedural compliance. However, it is also pertinent to note that the Court



should not penalize the applicant for minor or technical lapses, particularly where no prejudice has been caused to the opposing party.

22. The Court, under the aforesaid circumstances, finds it appropriate to condone the delay of 82 days in re-filing the written statement as the reasons accorded for the said delay was not only genuine and bona fide but also not inordinate that would cause serious prejudice to the other parties.

23. The position taken in the instant case does not mean that in all cases delay in re-filing the pleadings should be condoned in routine manner, each case will have to be considered on the anvil of the facts and circumstances involved therein.

24. In view of the aforesaid the delay in re-filing the written statement and the delay in filing the written statement both stands condoned. The written statement is taken on record.

I.A. 49364/2024, I.A. 49365/2024, I.A. 49366/2024, I.A. 49367/2024, I.A. 49368/2024

25. For the same reasons, the applications for condonation of delay in filing and re-filing the written statement by all the parties stands condoned. Let the written statement of the respective defendants be taken on record.

26. The plaintiff shall be at liberty to file the replication within 30 days from today.

27. In view of the above, instant applications also stand disposed of.

CS(OS) 334/2024, I.A. 9465/2024, I.A. 9466/2024, I.A. 37617/2024

28. Mr. Gaurav Bahl, learned counsel for the plaintiff, presses I.A. 9465/2024, which has been filed for injunction. The reply to the said application has already been filed by the defendants.

³ 2024 SCC OnLine Del 7025



29. Let the copy of the I.A. 37617/2024 be supplied to Mr. Manik Dogra, learned senior counsel for defendant nos. 1, 2 and 6, and liberty is given to the plaintiff to file a reply, if so necessitated.

30. List this matter on 03.03.2025 for consideration of I.A. 9465/2024 and I.A. 37617/2024.

PURUSHAINDR KUMAR KAURAV, J

JANUARY 28, 2025

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