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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 388/2024**
DR. REDDYS LABORATORIES LIMITEDPlaintiff

Through: Mr. Shakti Priyan Nair,
Mr. Parth Bajaj (VC), Advocates

versus

ZEELAB PHARMACY PVT LTDDefendant

Through: None

CORAM:
JOINT REGISTRAR (JUDICIAL) Dr. AJAY GULATI

ORDER
% **11.02.2025**

I.A. No. 45081/2024 by the defendant for condonation of delay of 72 days in filing the written statement.

1. Vide the present IA, defendant has sought condonation of 72 days in filing its written statement. At the outset, it needs a highlight that neither the averments in the IA nor oral submissions addressed on behalf of the defendant clarify as to from which date has the delay of 72 days been worked out by the defendant ?

2. It is not in dispute that defendant was served on 28.05.2024. Subsequently, it has also been served through email on 29.05.2024. Service of summons has also been effected through *whatsapp*, courier and speed post. The written statement was filed on 28.09.2024 which was beyond the 120 day period as worked out from 28.05.2024.

3. For seeking condonation of delay, following submissions



have been put forth on behalf of the defendant :

(i) That a black and white paper book was supplied alongwith the summons and since the present suit is a Trade Mark infringement suit, coloured copies of the photographs used in the plaint were required without which it was not possible for the defendant to correctly appreciate the allegations of infringement and passing off, levelled against the defendant.

(ii) That incomplete paper book was supplied wherein page nos. 19 & 20 of the plaint were missing.

(iii) The brief had initially been handed over to a counsel in the law office representing the defendant who was serving termination notice period and it was only when the brief was handed over to a new counsel that the defect of incomplete brief having been received was pointed out by the new counsel. Subsequently, on 11.09.2024 an email was sent to the plaintiff counsel for supplying the complete paper book which eventually was received on 07.10.2024 from the plaintiff.

4. In response, it has been submitted on behalf of the plaintiff that the defendant was also served through email on 29.05.2024 wherein a complete coloured paper book was supplied to the defendant. In **rebuttal**, it has been submitted and which fact has also been highlighted in the present IA that the service of summons through email was done on an *email id* of the defendant which was no longer in use at the relevant time **i.e.** on 29.05.2024.

5. *I have carefully considered the rival submissions.*

6. Dealing first with the submission that the service of



summons through email was carried out on an email which was no longer in use by the defendant, suffice to say that this aspect even if admitted to be true, came first to the notice of the plaintiff on 11.09.2024. Further, even if the said email was not in use by the defendant, the same would not mean that the email was not being accessed or could not be accessed by the defendant. It would be equally plausible to contend that the email was being monitored to check in-coming emails *though* it might not be in use for sending out emails. To contend that the email on which the service was done, was no longer in use for any purpose, a more concrete proof had to be shown regarding non-use / dis-use of the said email id than a mere averment.

7. Further, the submission regarding incomplete plaint having been received by the defendant appears to be an afterthought. If the brief had been handed over to a counsel when he or she was on termination notice, same would imply that the law office (representing the defendant) had complete faith in her / his competence and sincerity to handle a brief. Despite the same, if the counsel handling the matter did not point out anything regarding missing documents, something which would have been noticed with bare minimum diligence even on the first perusal of the plaint, only goes to buttress the impression that this particular submission is just an afterthought. Additionally, no details of the counsel said to be on termination notice, have been mentioned. Nothing has been stated in the IA as to when was the brief taken over by a new counsel. Still further, there is no averment as to when did the defendant actually engage the law office. It was though orally contended that the law office was approached by the defendant in August' 2024 which also sufficiently indicates



lack of all diligence on the part of the defendant, having been served on 28.05.2024.

8. As has already been pointed out above, the period of working out of 72 days delay has not been explained. If the missing pages of the plaint were supplied on 07.10.2024 by the plaintiff, Id. Counsel for the defendant has not been able to explain as to what prompted the defendant to file the written statement after the expiry of 120 day period which is the maximum permissible period. If the idea was only to meet the strict timeline, the same should have been done on or before 25.09.2024 which is when the 120 day period expired, as worked out from 28.05.2024. Even if worked out from 29.05.2024 when a complete coloured paper book was supplied on the email of the defendant, the period to file written statement expired on 26.09.2024.

9. Ld. Counsel for the defendant has placed reliance on the judgment delivered by the Hon'ble High Court of Delhi cited as *2022 SC Online Del 3403* to contend that service of summons has to be effective service which in turn implies supply of complete paper book and documents to the defendant.

10. I have carefully gone through the cited judgment. The facts of the cited judgment are completely different to the facts of the present suit. In the cited judgment, complete paper book had been supplied for the first time much after the date of issuance of summons and purportedly, after the 120 day deadline had expired.

11. Having observed as above, reference also needs to be



made to a submission on behalf of the defendant (which though has not been pressed during the course of submissions) that since the 30 day statutory period to file the written statement expired on 27.06.2024 (i.e. as worked out from 28.05.2024) when the Court was closed for vacations, the 30 day limitation would have technically expired on 01.07.2024. Consequently, as worked out from 01.07.2024, 120 day deadline would have expired on 29.09.2024. The written statement however, was filed on 28.09.2024.

12. I have searched the relevant law in this regard. The settled law on this aspect is that benefit of section 4 of the Limitation Act is available in case of ‘prescribed period’ and not in case of the ‘period’ condonation of which is in the discretion of the Court. Hence, defendant has to be given the benefit in the present case since it is the ‘prescribed period’ of 30 days which is available for filing a written statement, which expired during the summer / June vacations in the present case.

13. However, having observed as above, it would also be relevant to observe that defendant is getting the benefit of a technicality and *sans* this, its filing of written statement was patently beyond the 120 day deadline. Lack of diligence on the part of defendant has already been highlighted. Consequently, this Court deems it appropriate to impose exemplary cost of Rs. 50,000/- on the defendant subject to which, the IA stands allowed. Out of this cost, Rs. 10,000/- should be deposited with *Bharat Ke Veer* Fund, (online portal), and remainder should be handed over to the plaintiff / counsel for the plaintiff within three weeks failing which the written statement shall be *deemed* to



have been taken off the record. Delay stands condoned. Written statement is taken on record. Replication be filed within the period permissible, as worked out from today. IA stands disposed off.

14. Matter is already listed before the Hon'ble Court for 14.02.2025. Be placed before the Hon'ble Court on the date already fixed i.e. 14.02.2025, for further directions.

**Dr. AJAY GULATI
(DHJS),**

JOINT REGISTRAR (JUDICIAL)

FEBRUARY 11, 2025/sk

Click here to check corrigendum, if any