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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 522/2022**
HIMALAYA GLOBAL THROUGH ITS PARTNERS
ASHISH JAISWAL SAMBHAV KHANDELWAL
ANUJ JAISWAL Plaintiff

Through: Mr. Abhishek Kotnala, Advocate

versus

VISHAL AHUJA TRADING AS VISHAL LAMINATES
& ORS. Defendant

Through: Mr. S.Nithin (VC), Advocate for
D-1 to 3.

CORAM:
JOINT REGISTRAR (JUDICIAL) Dr. AJAY
GULATI (DHJS)

ORDER

% **05.04.2024**

IA no. 3197/2023 seeking condonation of delay of 69 days in
filing the written statement.

&

IA no. 1586/2023 seeking closure of the right of defs. to bring
on record the written statement and to take the same off the
record.

Since both the IA's effectively relate to the issue of written statement being taken on record or being struck off, arguments were addressed on both the IA's together.

The delay in filing the written statement, of which condonation has been sought, is 69 days. Defs. were served with summons on 01.8.2022. Written statement was filed on 09.11.2022 i.e. on the 99th day from the date of service of summons. The written statement, however, was filed without the mandatory affidavit of admission & denial. It was on 13.1.2023



that the Registry marked the filing of written statement as defective and sent it for re-filing. One of the defects pointed out was that the written statement was not accompanied with the affidavit of admission & denial. The defect was promptly removed and the written statement was refiled on 20th Jan. 2023 which though was again marked as defective on some other ground on 23rd Jan. 2023 but which defect also was promptly removed on 28th Jan. 2023.

It is the submission of the plaintiff that as per the High Court Rules (Original Side) 2018, written statement has to be mandatorily filed alongwith the affidavit of admission & denial without which not only can the written statement not be taken on record, but failure to file affidavit of admission & denial will result in defendants deemed to have admitted the plaintiff's documents. It was further submitted that affidavit of admission & denial was filed beyond the max permissible period of 120 days i.e. from the date of service of summons, and hence, the written statement along with affidavit of admission & denial must be taken off the record. Additionally, it was also argued that defs. did not bother to check up the status of the filing of their written statement till close to 2 months i.e. from 09.11.2022 till 13.01.2023.

It is important to highlight that even though the written statement was refiled soon after the defects were pointed out by the Registry, IA no. 3197/2023 (for seeking condonation of delay in filing written statement) was not filed till 09.02.2023 which is after the plaintiff's counsel highlighted that defs. need to file an application for seeking condonation of delay in filing the written



statement and plaintiff had filed an IA seeking direction for closure of defendants right to bring the written statement on record i.e. IA No. 1586/2023. Very interestingly, the IA No. 3197/2023 and the accompanying affidavit are both dated 02.11.2022 i.e. even before the written statement was filed on 09.11.2022 and yet the application was actually filed on 09.02.2023. Surprisingly, even the Registry did not raise any objection on account of delay even though the written statement was marked as defective twice, as per the e-filing log.

Supporting his prayer for condonation of delay, Id. Counsel for the defs. submitted that since the written statement has been filed within the max. permissible period and the affidavit of admission & denial having been filed within 30 days of the defect being notified by the Registry, there is cogent ground for condoning the delay. In support of his submissions, Id. Counsel for the defs. has placed reliance on 3 judgments of the Hon'ble High Court of Delhi to buttress the argument that if the written statement has been filed within the max permissible period of 120 days, and the defect of non-filing of affidavit of admission & denial having been cured within 30 days of the same having been notified by the Registry, the written statement can be taken on record:

1. Cosco International Pvt. Ltd. Vs Jagat Singh Dugar MANU/DE/1274/2022
2. Health and Glow Private Limited Vs. Vineet Chugh CS (COMM) 528/2022
3. Frankfinn Aviation Services Pvt. Ltd. Vs. TATA SIA Airlines Ltd. 2023 SCC Online Del 4385



Rebutting the defs.'s plea, Id counsel for the plaintiff has also placed reliance on 3 judgments of the Hon'ble High Court of Delhi in support of his submissions:

1. MakeMy Trip (India) Pvt. Ltd. Vs. Superb My Trip Pvt. Ltd.
CS (COMM) 1209/2018
2. Sameer Chaudhuri Vs. Dr. Rehyan Chaudhari
CS (OS) 283/2019
3. Unilin Beheer B.V. Vs. Balaji Action Buildwell
CS (COMM) 1683/2016

Ld. Counsel for the plaintiff argued that though in *Cosco International Pvt. Ltd. Vs. Jagat Singh Dugar*, a distinction was drawn by the Hon'ble High Court between 'filing' of the written statement and 'taking on record' the written statement (to hold that defect of 'filing' of written statement without affidavit of admission & denial can be cured pursuant to which such a defective written statement can be 'taken on record'), in *Sameer Chaudhari Vs. Dr. Rehyan Chaudhari*, such a distinction was dissolved by holding that a written statement without affidavit of admission & denial can neither be filed **nor** can be taken on record. Para 31 of the judgment delivered in *Unilin Beheer B.V. Vs. Balaji Action Buildwell* was also highlighted which is reproduced as under -

Para 31. *I thus hold, that in the event of the written statement being filed without affidavit of admission and denial of documents, not only shall the written statement be not taken on record but the documents filed by the plaintiff shall also be deemed to be admitted and on the basis of which admission the*



Court shall be entitled to proceed under Order VIII Rule 10 CPC.

Ld. Counsel for the defendant on the other hand highlighted that the Hon'ble Court's observation in para 31 of the judgment delivered in *Unilin Beheer B.V. Vs. Balaji Action Buildwell* was considered by the Hon'ble High Court in *Cosco International Pvt. Ltd. Vs. Jagat Singh Dugar*, and it was held that the said *para* will apply only when the written statement is filed beyond the 120 days period and the defect of not having filed an affidavit of admission/denial of documents is also not cured within the max. 30 day period (prescribed by rules) from the date that the filing objection is brought to the knowledge of the party, which observation was recorded by the Hon'ble Court in view of the fact that even in *Unilin Beheer B.V.* judgment, delay in filing the written statement and affidavit of admission & denial was condoned since it had been filed within the permissible 120 day period.

I have carefully considered the rival submissions.

So far as the plaintiff's argument of distinction between 'filing of written statement 'and 'taking on record 'the written statement without affidavit of admission and denial having been done away with is concerned i.e. relying on *Sameer Chaudhuri Vs. Dr. Rehan Chaudhuri*, it would be appropriate to highlight that the said distinction has been reiterated by the Hon'ble High Court of Delhi in a later judgment i.e. *Frankfinn Aviation Services Private Ltd. Vs. TATA SIA Airlines Ltd.*



The subsequent argument of defendant not having bothered to check up the status of the written statement for over 2 months (the written statement was filed on 9 Nov. 22 and was marked as defective on 13 Jan. 2023), is also not of any relevance since the e-filing log record shows that the period from 9th Nov. 22 till 13th Jan. 23 was the period taken up by the registry for scrutinising the written statement. The fact that within a week of the written statement having been marked as defective, it was refiled clearly shows the diligence of the defendant atleast to that extent.

There might be some merit in the submission of the plaintiff that despite a clear statutory stipulation that written statement must be accompanied with affidavit of admission & denial, filing of the written statement without such affidavit should be treated as a non-est filing as it conveys nothing else but an intent to delay the proceedings without a cause, which is precisely what the Commercial Courts Act seeks to do away with but the judgments relied upon by the Id. Counsel for the defendant unambiguously hold that non-filing of affidavit of admission & denial is a curable defect provided the written statement has been filed within the max. permissible period and the objection raised by the registry on account of non-filing of the affidavit of admission & denial having been removed within the 30 day period. In the present suit also, the written statement has been filed within the max. permissible period and the defect of non-filing of affidavit of admission & denial was removed within a week of being pointed out by the registry, and consequently, the written statement and affidavit of admission and denial can be taken on record after condoning the delay.



However, in the application seeking condonation of delay except for the cursory excuse of collecting documents from various platforms, there is no cogent explanation as to why was the written statement filed with a delay of 69 days and why was the affidavit of admission & denial not filed despite it being a clear legal stipulation. Additionally, as already highlighted, the application seeking condonation of delay had been prepared even before the filing of the written statement but was safely tucked away and eventually filed much later although it should have been filed much earlier. For such act of the defendant, plaintiff can be suitably compensated with costs and accordingly, cost of Rs.20,000/- is imposed on the defendant out of which Rs.15,000/- be paid to the plaintiff within 2 weeks failing which written statement as also the affidavit of admission & denial shall be deemed to have been taken off the record. Remainder be deposited within *Bharat Ke Veer Fund*, online portal within 3 weeks. Replication be filed within the period permissible, as worked out from today.

Both the IA's stand disposed off accordingly.

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Put up for completion of pleadings on 22.07.2024.

**Dr. AJAY GULATI (DHJS),
JOINT REGISTRAR (JUDICIAL)**

APRIL 5, 2024/sk

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