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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 566/2022**

GEMINI EDIBLES AND FATS INDIA LIMITED..... Plaintiff
Through: Mr. Satvik Varma, Sr.
Advocate with Ms. Shikha Sachdeva, Ms.
Mugdha Palsuk and Mr. Tushar Mudgil,
Adv.

Versus

LV BHAVANI SANKAR Defendant
Through: Ms. Rajeshwari H. and Ms.
Swapnil Gaur, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **ORDER**
12.05.2023

IA 4079/2023 (for condonation of delay in filing written statement)

1. This is an application by the defendant, seeking condonation of delay in filing the written statement in response to the present suit.

2. Summons in the suit were admittedly served on the defendant on 22nd August 2022. The normal period of 30 days within which a written statement could be filed, as per Order VIII Rule 1¹ of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015 would, therefore, have expired on or around 22nd September 2022. The maximum condonable period of 90 days, thereafter, would expire on 20th December 2022.

¹ 1. **Written statement.** – The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.



3. The written statement came to be filed on 8th December 2022, which was within the maximum condonable period. The written statement was accompanied by the present application, seeking condonation of delay. The ground for condonation of delay is to be found in paras 5 and 6 of the application, which read thus:

“5. It is submitted that the Plaintiff has filed a voluminous Complaint and set of documents. It took time for the Defendant to go through the same and revert to each and every averment.

6. Moreover, it is submitted that considering the extensive nature of the matter and in order to support the contention made in the Written Statement, the Defendant was making sincere efforts to arrange the documents. The Defendant was relying on various sources for collection of documents and procurement of the same took considerable length of time.”

4. The written statement, which was filed on 8th December 2022, was returned on 22nd December 2022 by the Registry, with objections.

5. Consequent on removal of objections, the written statement was re-filed on 31st December 2022. Thus, re-filing of the written statement was also beyond the maximum period of 120 days, only by 11 days.

6. The question before the Court is whether the prayer for condonation of delay in filing the written statement deserves to be allowed.

7. Ms. Rajeshwari, learned Counsel for the defendant, has placed reliance on the judgment of a coordinate Bench passed in ***Airports Authority of India v. TDI International India Pvt Ltd***², particularly on paras 8 and 15, which read thus:



“8. In *DDA Vs. Durga Construction Company*³, Division Bench of this Court explained the distinction between nonest filing and re-filing. It was observed that the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respect, however certain documents may not be clear and may require to be retyped. In such a case where the initial filing is within the period of 120 days as specified in Section 34 (3) of the A&C Act, but the re-filing is beyond this period it cannot be said that the Court lacks jurisdiction to condone the delay in re-filing. Section 34 (3) of the A&C Act only prescribes limitation with regard to filing an application to challenge the Award and not for re-filing. The question whether the court should in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevented re-filing the petition/ application within time. It was also held that the cases of delay in refiling are different from the cases in delay in filing in the first instance in as much as the party has already evinced its intention to take recourse to the remedies available in the Courts and also taken steps in this regard. It cannot be thus, assumed at the stage of refiling that the party has given up its rights to avail the legal remedies. In the absence of any specific statute that limits the jurisdiction of the Court in considering the question of delay in re-filing, it cannot be accepted that the Courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing of the application.

15. The short question is whether the petitioner has been able to establish a ground for condonation of delay in refiling the petition. The entire issue hinges on the determination that whether the first filing on 14th January, 2021 (which was admittedly within the period as prescribed under Section 34 of A&C Act, 1996) can be considered as a filing or is it a non-est filing. The main objections taken to the first filing were that “total 850 pages filed, specified value w.r.t to pecuniary value be given in para of pecuniary jurisdiction. documents be made true copy duly signed each page”. It is evident from the nature of defects that they were only technical in nature and otherwise it was a valid filing, which date has to be reckoned for calculating the limitation period. The first filing was within the period of limitation.”

8. Mr. Varma, learned Senior Counsel for the plaintiff, seriously



opposes the present application for condonation of delay. He submits that the averments contained in paras 5 and 6 of the application, seeking condonation of delay cannot be regarded as disclosing sufficient cause for such condonation. Moreover, he submits that the plea of the defendant, that the delay was occasioned as it was seeking to collect documents from various sources, is misconceived as, in fact, all documents which were filed with the written statement, were in the possession of the defendant.

9. Ms. Rajeshwari points out, *per contra*, that the documents which were filed with the written statement included documents of third parties.

10. Mr. Varma relies on the judgments of this Bench in **Vineet Anand v. Kiran Anand**⁴ and of a coordinate Bench in **Intiyaz Sheikh v. Puma Se**⁵.

11. It is well settled, in the matter of condonation of delay, where the written statement is filed within the maximum condonable period of 120 days envisaged in Order VIII Rule 1 of the CPC, the Court is required to adopt a liberal approach. Refusal to condone the delay would result in denial and deprivation, to the defendant, of the right to contest the suit. It is only in the most exceptional circumstances, where the Court finds that there is gross and unconscionable delay or indolence being displayed by the defendant that such a drastic measure should be adopted. Else, it is fundamental to justice that both sides, in an adversarial litigation, should be given full opportunity to ventilate their respective grievances in the manner known to law. It

³ 2013 SCC OnLine Del 4451

⁴ CM(M) 1044/2022

⁵ (2021) 88 PTC 399
CS(COMM) 566/2022



must not be forgotten that, if the readings of either party are not before the Court, the Court does not have, before it, the full picture as it were. Adjudication of the *lis*, without complete awareness of the facts, is likely to do more disservice, than service, to the cause of justice.

12. In this case, the written statement was filed on 8th December 2022, which was within the maximum condonable period of 90 days. The grounds urged in the application for condonation of delay are that the plaint was accompanied by voluminous documents and that time was being expended in collecting the documents to file with the written statement.

13. It is seen from the record that the plaintiff has filed the documents running into 1780 pages with the plaint. Ms. Rajeshwari points out that the documents filed with the written statement also included the documents relating to third parties.

14. Given these facts, in my opinion, it would be a gross travesty of justice if this Court were to adopt a hyper-technical approach and refuse to condone the delay in filing the written statement, even though the written statement was filed within the maximum condonable period provided in the CPC as amended by the Commercial Courts Act.

15. Apropos the judgments cited by Mr. Varma, a perusal thereof reveals that neither of the said decisions can come to his aid.

16. The decision in ***Vineet Anand***⁴ involved a situation in which beyond the period of 120 days, the written statement was filed almost



after two more years, for which there was no explanation provided. Similarly, the decision of the coordinate Bench in *Intiyaz Sheikh*⁵ involved a case where the only ground taken for not filing the written statement was that the defendant was unable to enter the Court as there was a strike by lawyers and he apprehended bodily harm.

17. It is obvious that neither of these cases can be analogized to the facts of the present case.

18. In the interests of justice, therefore, the delay in filing the written statement is condoned.

19. The application is allowed.

CS(COMM) 566/2022, I.A. 13009/2022 (Order XXXIX Rules 1 and 2 of the CPC), I.A. 17518/2022 (Order VII Rule 11 of the CPC), I.A. 22350/2022 (Order XXXIX Rule 4 of the CPC) and I.A. 1162/2023 (Order XIII A of the CPC)

20. Renotify on 27th July 2023.

C. HARI SHANKAR, J.

MAY 12, 2023

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