



\$~2

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 678/2021

TARUN KUMAR CHAWLA & ORS.

.....Plaintiff

Through: Mr. Sidharth Joshi with Ms. Arun
Pal, Advs. (through VC).

versus

PREM KUMAR CHAWLA & ORS.

.....Defendant

Through: Mr. Amit Sanduja, Ms. Sakshi
Singh, Mr. Tushar Batra and Mr.
Saurabh Chawla, Advs. for D-1.
None for D-2 to 4.

Mr. Saurabh Kapoor, Adv. for all
three LR's of D-5 (through VC).

CORAM:

JOINT REGISTRAR (JUDICIAL) SH. DEVENDER
KUMAR GARG (DHJS)

O R D E R

04.05.2024

%

Proceedings are being conducted through hybrid mode.

**I.A. No. 10968/2023 (by defendants no.5(ii) & 5(iii) u/S 5
of Limitation Act r/w Section 151 CPC for condonation
of delay of 123 days in filing written statement);**

**I.A. No. 10969/2023 (by defendant no.5(i) u/S 5 of the
Limitation Act r/w Section 151 CPC for condonation of
delay of 123 days in filing written statement);**

**I.A. No. 10970/2023 (by defendants no.5(i) to 5(iii) u/S 5
of Limitation Act r/w Section 151 CPC for condonation
of delay of 159 days in re-filing IA Nos.10968/2023 and
10969/2023)**

1. Today the captioned IAs are listed for order.
2. As per office noting, judgments were filed on behalf of
the plaintiff vide diary no.1349155/2024.



3. Office noting further shows that judgments filed vide diary no.1269795/2024 and 1342979/2024 were returned under objection.
4. Ld. Counsel for plaintiff submits that he does not pursue diary no.1342979/2024 as the judgments contained vide said diary no. have already been filed vide diary no. 1349155/2024.
5. Ld. Counsel for LR of defendant no.5 submits that he has filed judgments vide diary no.1269795/24, however, the same are under objection. At the request of Ld. Counsel, let the copy of judgments be sent on email ID: vermavinayverma84@gmail.com of P.A. of undersigned.
6. At this stage, judgments have been received on behalf of LR of defendant no.5 on the above said email ID.
7. Re-notify the captioned IA for orders at 04.00 p.m.

At 04:00 p.m.

I.A. No. 10968/2023 (by defendants no.5(ii) & 5(iii) u/S 5 of Limitation Act r/w Section 151 CPC for condonation of delay of 123 days in filing written statement);

I.A. No. 10969/2023 (by defendant no.5(i) u/S 5 of the Limitation Act r/w Section 151 CPC for condonation of delay of 123 days in filing written statement);

I.A. No. 10970/2023 (by defendants no.5(i) to 5(iii) u/S 5 of Limitation Act r/w Section 151 CPC for condonation of delay of 159 days in re-filing IA Nos.10968/2023 and 10969/2023)

8. By this common order, I shall decide the captioned IAs.
9. IA No.10968/2023 has been moved by defendants no. 5(ii) & 5(iii) for condonation of delay of 123 days in filing their written statement. Brief facts *inter alia* stated in the said IA are that “both defendants no.5(ii) and 5(iii) are living separately to defendant no.5(i) and rarely meet



each other. It is further stated that despite having current address of the defendants no.5(ii) & 5(iii), the plaintiffs failed to provide correct and proper address of defendants no.5(ii) & 5(iii) in the present matter, rather with bad intention provided address of defendant no.5(i), who rarely meet defendants no.5(ii) & 5(iii). It is further stated that defendant no.5(ii) (sic) is living at Baltana, Distt. Mohali alongwith his family and working in private firm and defendant no.5(ii) is presently living at Ambala after her marriage alongwith her husband and other family members and they both meet defendant no.5(i) on some occasions and they were informed by defendant no.5(i) on 31.07.2022, two days before the hearing. Thus, in actual, the defendants no.5(ii) and 5(iii) came in the knowledge of the suit filed by the plaintiff on 31.07.2022 and thus, actual limitation qua the said defendants started from 31.07.2022 and thus, there is mere delay of 50 days and not 120 days. It is further stated that after 2.8.2022, the defendants no.5(ii) and 5(iii) were under impression that the written statement is to be filed before next date of hearing i.e. 02.12.2022 and as such, have no knowledge about limitation in filing the written statement and could not contact each other and the defendant no.5(i) contacted his counsel to file written statement in first week of September. It is further stated that the delay in filing written statement is neither wilful nor intentional. It is prayed that delay in filing written statement on behalf of defendants no.5(ii) and 5(iii) may be condoned and the written statement may be taken on record.”

10.IA No.10969/2023 has been moved by defendant no.5(i)



for condonation of delay of 123 days in filing written statement. Brief facts *inter alia* stated in the said IA are that “the defendant no.5(i) is not having knowledge about the period within which the written statement is to be filed and was not having any contacts with advocates at Delhi to defend the suit filed by the plaintiff. It is further stated that the applicant contacted his younger brother i.e. defendant no.5(iii) on 31.7.2022 and engaged the counsel from some reference on 01.08.2022 who appeared on 02.08.2022. It is further stated that the defendant no.5(i) was under the impression that the written statement was to be filed before next date of hearing i.e. 02.12.2022 and as such, has no knowledge about the limitation in filing the written statement and he could not contact the other defendants. It is further stated that the defendant no.5(i) was under the impression that his younger brother will coordinate with their counsel but due to some issues, he could not contact their counsel and he contacted the undersigned to file the written statement in first week of September. It is further stated that the delay in filing written statement is neither wilful nor intentional. It is prayed that delay in filing written statement on behalf of defendant no.5(i) may be condoned and written statement may be taken on record.”

11.IA No.10970/2023 has been moved by defendants no.5(i) to (iii) for condonation of delay of 159 days in filing written statement. Brief facts *inter alia* stated in the said IA are that “the counsel for applicant had instructed his clerk to file the written statement alongwith application for condonation of delay and the same was filed on



3.11.2022 but the objections were raised by Registry. It is further stated that plaintiff has already filed replication to written statement filed on behalf of defendants no.5(i) to (iii). It is further stated that the undersigned [counsel for defendants no.5(i) to (iii)] is not regular practitioner at High Court of Delhi, therefore, is availing service of clerk of some other counsel and he came to know of the objections on 24.03.2023 during the course of hearing and the applicant immediately instructed the concerned clerk to remove the objections at the earliest whereas he was busy with his regular counsel and applicant visited Delhi to file his documentation in Supreme Court of India in lieu of AOR examination and on rechecking found that objections have still not been removed despite repetitive instructions. It is further stated that delay in refiling the application for condonation of delay in filing the written statement is neither willful nor intentional. It is further stated that no prejudice will be caused to the plaintiff if the application of defendants no.5(i) to (iii) to condone delay of 159 in re-filing application for condonation of delay is condoned.”

12.Reply to IA No.9068/2023 was filed on behalf of the plaintiff taking preliminary objections that the application is not maintainable as it is well settled law that ignorance of law is not a defense which can be raised by any of the party. It is also stated that admittedly defendants no.5(ii) & 5(iii) were served on 22.01.2022 whereas the delay which has been calculated is from the date of knowledge. In reply on merits, the contents of the application were denied by the plaintiff. It is stated that there is no dispute



in receiving summons on the addresses mentioned in the plaint. It is denied that the defendants no.5(ii) & (iii) came to knowledge of the suit filed by the plaintiff on 31.07.2022 and that the actual limitation for them started from 31.07.2022. It is prayed that the application may be dismissed.

13. Similar reply to IA No.9069/2023 was filed on behalf of the plaintiff taking preliminary objections that application is not maintainable as it is well settled law that ignorance of law is not a defense which can be raised by any of the party. It is also stated that admittedly defendants were served on 22.01.2022 whereas the delay which has been calculated is from the date of knowledge. In reply on merits, the contents of the application were denied by the plaintiff. It is stated that there is no dispute in receiving summons on the addresses mentioned in the plaint. It is denied that the defendants were under the impression that the written statement was to be filed by them before next date of hearing i.e. 02.12.2022. it is also denied that the delay was neither intentional nor willful. It is stated that there is not only delay in filing written statement, but there is delay in re-filing of application for condonation of delay also. It is prayed that the application may be dismissed.

14. Reply to IA No.9070/2023 was filed on behalf of the plaintiff taking preliminary objections that the application is not maintainable as there is no material particulars and the applicants have concealed the material particulars. In reply on merits, the contents of the application were denied by the plaintiff. It is denied that the counsel for the



defendants no.5(i) to (iii) came to know about objections in application for condonation of delay on 24.03.2023 (wrongly mentioned as 24.08.2022) during course of hearing. It is stated that after 03.11.2022, there was another hearing which has taken place on 02.12.2022 which records that there were objections in the written statement filed on behalf of the defendants no.5(i) to (iii) and the counsel had undertaken to remove the objections on 02.12.2022. It is prayed that the application may be dismissed.”

15. Separate rejoinders to the replies of defendants no.5(i) to (iii) qua IA Nos. 10968/2023, 10969/2023 & 10970/2023 were filed on behalf of plaintiff wherein they denied the averments of the reply and reiterated the averments of their applications.

16. I have already heard argument from Mr. Saurabh Kapoor, Ld. Counsel for defendants no.5(i) to (iii) and from Mr. Siddharth Joshi, Ld. Counsel for plaintiff and have also perused the material available on record carefully. Ld. Counsel for plaintiff has relied upon judgment titled as “Charu Aggarwal vs. Alok Kalia & Ors.” dated 1.3.2023 in CS(OS) 214/2022 and Ld. Counsel for defendants no. 5(i) to (iii) have also relied upon judgments titled as “Raj Process Equipments & Systems Pvt. Ltd. & others vs. Honest Derivatives Pvt. Ltd.”, 2022 SCC OnLine SC 1877 and “Saleem Advocate Bar Association vs. Union of India”, (2005) 6 SCC 344.

17. Record perused. Perusal of the file would show that the defendants no.5(i) to (iii) were served on 23.05.2022. Perusal of the file would further show that the written



statement on behalf of defendants no.5(i) to (iii) was initially filed on 03.11.2022 vide diary no.1852004/2022. Perusal of e-filing log would show that the said written statement was under defects *inter alia* defect of non-filing of affidavit of admission/denial and proof of service. From the e-filing log history, it transpires that the said written statement has been shown as under defects for not removing previous defects as on 26.07.2023. Perusal of the login history would further show that even till date, the said written statement filed vide the above said diary no., is under defect. Even if, initial filing of the written statement is considered to be of 03.11.2022, it comes out that the same has been filed after a period of 163 days from the date of service of defendants no.5(i) to (iii) i.e. from 23.05.2022, which is beyond 120 days from the date of service of defendants.

18. In judgment titled ***“Harjyot Singh vs. Manpreet Kaur”*** **2021 SCC Online Del 2629**, Hon’ble High Court of Delhi has observed as follows: -

“23. In Desh Raj's case, the Supreme Court had clearly held that the time lines provided for filing of the written statement in a non-commercial suit were only directory and not mandatory. It was earnestly contended by Mr Baruah that the said standard would be equally applicable in interpreting Rule 4 of the DHC (OS) Rules. The said contention cannot be accepted as the decision of the Division Bench in Ram Sarup Lugani (supra) is unambiguous. The Division Bench of this Court had interpreted the words 'but not thereafter' as used in Rule 4 of the DHC(OS) Rules, as limiting the jurisdiction of this Court to condone the delay only to the period as mentioned, which in the case of written statement is 90 days. The court had also considered the decision of the Supreme Court in Desh Raj v Balkishan (Supra). The decision in Ram Sarup Lugani (supra) is binding on this Court.



.....
.....

38. Mr Baruah's contention that the defendant could not have been expected to file the written statement while the parties were endeavouring to resolve the disputes amicably, is merited. As noticed above, the same is a sufficient ground for condoning the delay in filing the written statement. In *Red Bull AG v Pepsico India Holdings Pvt. Ltd & Anr. (Supra)*; *Dr Sukhdev Singh Gambhir v Shri Amrit Pal Singh & Others : 105 (2003) DLT 184*; *Telefonaktiebolaget L. M. Ericsson v Lava International Limited : 226 (2016) DLT 342* this court had condoned the delays on account of the time spent by the parties in endeavouring to resolve the disputes in Mediation. However, the time spent by the parties in Mediation cannot be excluded from the time stipulated for filing of the written statement or replication. As noticed above, the defendant is required to file the written statement within a period of thirty days from the date of receipt of summons. This Court can condone a delay of ninety days beyond that period provided that the defendant satisfies this Court that it was prevented by 'sufficient cause for exceptional and unavoidable reason' in filing the written statement within the period of 30 days. The fact that the parties were attempting to resolve the disputes would be a sufficient cause to condone the delay. However, the Court cannot condone the delay beyond the period of ninety days as stipulated under Rule 4 of DHC(OS) Rules. There is no provision to the aforesaid effect. Once it has been held that the provisions of Rule 4 of DHC(OS) Rules are mandatory and, the Court does not have jurisdiction to condone the delay beyond a period of ninety days as has been held by the Division Bench of this Court in *Ram Sarup Lugani and Another (supra)*, the question of condoning the delay beyond that period for any reason whatsoever is not permissible.”

19. The undersigned would also rely upon judgment titled as
“Col. Ashish Khanna SM Retd. vs. Delhi Gymkhana Club & Ors.” in CS(OS) 171/2022 dated 221.08.2023
wherein following observations have been made:

“20. In *Charu (Supra)*, the Division Bench has very emphatically held the inviolability of the



hard stop period of 120 days prescribed in Rule 4 for filing the written statement. Court re-stated the principles laid down in Gautam Gambhir (Supra) and Harjyot Singh (Supra), and declared that they act as binding precedents on the issue.

As of now, Charu (Supra) has laid to rest the debate on the ability of courts to condone delay in filing of written statement beyond 120 days in a non-commercial suit. Rule 4 circumscribes the power of court to condone the delay beyond the maximum permissible time of 120 days.”

- 20.Perusal of IA Nos. 10968/2023 and 10969/2023 would show that defendants no.5(i) to (iii) have also taken the plea that they had no knowledge about limitation in filing written statement. It is settled law that ignorance of law is no defence.
- 21.The judgments relied upon by Ld. Counsel for defendants no.5(i) to (iii) are not applicable to the facts of the present matter being distinguishable on facts.
- 22.Keeping in view the above said facts & circumstances and in view of the above said judgments, the undersigned has no jurisdiction to condone the delay in filing of written statement beyond 120 days from date of service of defendants no.5(i) to (iii) and hence, both applications i.e. IAs No.10968/2023 and 10969/2023 are without any merit and the same stand dismissed accordingly. Written statements alongwith affidavits of admission/denial of documents filed on behalf of defendants no.5(i) to (iii) vide diary no. 1852004/2022 be taken off the record.
- 23.Further, IA No.10970/2023 has been moved on behalf of the defendants no.5(i) to (iii) seeking condonation of delay of 159 days in re-filing of IA Nos. 10968/2023 and 10969/2023. The undersigned has already unserved that even initial date of filing of written statement on behalf of



defendants no.5(i) to (iii) was beyond 120 days, therefore, applications for condonation of delay in filing written statements are not maintainable. Hence, IA No.10970/2023 for condonation of delay in re-filing IA Nos. 10968/2023 and 10969/2023 is not maintainable and same also stands dismissed accordingly.

24.All three captioned IAs stand disposed off accordingly.

I.A. No. 16517/2021 (by plaintiff u/O XXXIX Rules 1 & 2 r/w Section 151 of CPC) &

I.A. No. 867/2023 (by plaintiff u/O XII Rule 6 r/w Section 151 of CPC)

25.It is submitted that the captioned IAs are coming up for hearing before the Hon'ble Court on 07.05.2024.

I.A. No. 22873/2023 (by defendant no.1 u/O VIII Rule 1(A) & 3 r/w Section 151 CPC)

26.Reply to the captioned IA was already filed on behalf of the plaintiffs. The said reply has also been adopted on behalf of defendants no.2 to 4 as recorded in order dated 26.04.2024.

27.As per office noting, rejoinder to the above said reply has been filed by the defendant no.1.

28.Reply stated to be filed on behalf of LR's of defendant no.5 has not come on record. Report has been received from Registry that vide diary no.169396/2024, affidavit of admission/denial was filed on behalf of defendants no.5(i) to (iii) and not reply to the captioned IA.

29.Ld. Counsel for plaintiff has submitted that he not received copy of any reply on behalf of LR's of defendant no.5. He has further submitted that right of LR's of the defendant no.5 to file reply to the captioned IA may be closed.



30. Heard. It appears that already sufficient opportunities have been granted to LR's of defendant no.5 for filing reply to the captioned IA, but the same has not been filed till date. Hence, right of LR's of defendant no.5 to file reply to the captioned IA stands closed.

31. Pleadings qua the captioned IA are complete.

32. Ld. Counsels for parties appearing today have submitted that the captioned IA may be placed before the Hon'ble Court where they would make their further submissions.

33. At joint request, let the captioned IA be placed before Hon'ble Court for further directions on the date already fixed i.e. **07th May, 2024.**

I.A. No. 14253/2022 (by plaintiff u/O VIII Rule 10 of CPC by plaintiff for pronouncing judgments against defendants no.5)

34. Pleadings qua the captioned IA are complete.

35. Ld. Counsels for parties appearing today have submitted that the captioned IA may be placed before the Hon'ble Court where they would make their further submissions.

36. At joint request, let the captioned IA be placed before Hon'ble Court for further directions on the date already fixed i.e. **07th May, 2024.**

CS(OS) 678/2021

37. Pleadings qua defendants no.1 to 4 are already complete.

38. Vide order passed today while disposing off IAs No.10968/2023, 10969/2023 and 10970/2023, written statement and affidavit of admission/denial of documents filed on behalf of defendants no.5(i) to (iii) has been taken off the record. In view of the same, let replication filed on behalf of plaintiff qua defendants no.5(i) to (iii) be also taken off the record.



39. Pleadings in the suit are complete.
40. Let Joint Document Schedule including its hard copy be filed at least two weeks before next date of hearing.
41. Both the parties shall file hard copies of their documents at least two weeks before next date of hearing.
42. Re-notify the matter for admission/denial of documents and further proceedings on **12th September, 2024**.

DEVENDER KUMAR GARG (DHJS)
JOINT REGISTRAR (JUDICIAL)

MAY 4, 2024/v

Click here to check corrigendum, if any