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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 730/2022
CHANDNI FAZLI

..... Plaintiff

Through: Mr. Mohit Gupta, Ms. Seemabh
Ali Fatima, Ms. Aayushi Jain,
Ms. Rashi Aggarwal & Ms.
Gunjan Negi Advs.

versus

RAZIA SULTANA

..... Defendant

Through: Mr. Mukesh Kr. Dral, Mr.
Rachit Khandelwal & Mr. Rohan
Aggarwal, Advs for D-1 to 3.

CORAM:

**JOINT REGISTRAR (JUDICIAL) SH. MANISH
SHARMA, (DHJS)**

ORDER

03.05.2024

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**I.A.No.8769/2023 (under Order VIII Rule 1 CPC filed
on behalf of defendant no.1 to 3 for condonation of
delay in filing written statement)**

1. By way of this order, I shall dispose of the application filed under Order VIII Rule 1 CPC on behalf of defendant nos.1 to 3 seeking condonation of delay in filing the written statement.
2. It is averred in the captioned IA that the defendant nos.1 to 3 filed applications under Order VII Rule 11 r/w Order II Rule 2 CPC and under Section 35-A r/w Section 151 CPC within the period of 30 days of receipt

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of the summons in the present suit. It is further averred that the defendant nos.1 to 3 have filed written statement as per the provisions of Order VIII Rule 1 CPC along with the captioned IA for condonation of delay. It is averred that there is no deliberate delay in filing the written statement. The defendants, since inception, were diligently pursuing the matter.

3. Learned counsel for defendant nos.1 to 3 argued that the applicants filed their written statement within the prescribed period, however, the written statement was returned for re-filing a number of times with different objections. The delay occurred due to procedural matters which only the registry follows and it is liable to be condoned. If delay in filing written statement is not condoned, the defendant nos.1 to 3 would suffer irreparable loss and injury. It was thus prayed that the delay in filing the written statement may be condoned.
4. In support of his arguments, learned counsel for defendant nos.1 to 3 has relied upon the following case laws/judgments:

- (i) *Viceroy Engineering Vs. Smiths Detectin Veecon Systems Private Ltd. O.M.P.(COMM) 302/2019 & I.A.No.475/2022;*
- (ii) *Airports Authority of India Vs. TDI International Private Ltd., O.M.P. (COMM) 70/2021;*
- (iii) *Delhi Development Authority Vs. M/s Durga Construction Co. FAO (OS) 485-486/2011 &*
- (iv) *Cosco (India) Limited Vs. Paramsukh Nirman Pvt. Ltd. CS(COMM) 1051/2018*

5. The plaintiff vehemently opposed the captioned IA and

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filed a detailed reply. It is averred in the reply filed on behalf of the plaintiff that the defendant nos.1 to 3 have filed the written statement beyond the statutory period of 30 days. It is further averred that the application for condonation of delay has been filed under wrong provision, as the power of enlargement of time/condone the delay for filing written statement is now governed by the provision of Chapter VII Rule 4 of Delhi High Court (Original Side) Rules, 2018.

6. It is averred that the captioned IA is not maintainable in view of the amendment to Delhi High Court (Original Side) Rules, 2018; Rule 4 of Chapter VII of Delhi High Court (Original Side) Rules, 2018 reads as under:

4. Extension of time for filing written statement.—*If the Court is satisfied that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within 30 days, it may extend the time for filing the same by a further period not exceeding 90 days, but not thereafter. For such extension of time, the party in delay shall be burdened with costs as deemed appropriate. The written statement shall not be taken on record unless such costs have been paid/deposited. In case the defendant fails to file the affidavit of admission/ denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted. In case, no written statement is filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement.*



7. It is further averred that the statutory period of 30 days has already been expired and no explanation whatsoever has been furnished for not filing the written statement within the stipulated period. It is averred that the defendant nos.1 to 3 are completely silent and have failed to disclose sufficient cause for exceptional and unavoidable reason in filing the written statement beyond the statutory period of 30 days. It is further averred that mere filing of application under Order VII Rule 11 r/w Order II Rule 2 CPC or application under Section 35-A r/w Section 151 CPC would not stop the limitation prescribed for filing the written statement.
8. It is averred that the defendants were first served with the summons of the suit by Whatsapp on 22/12/2022 and the statutory period of 30 days for filing the written statement expired on 21/01/2023. It is further averred that the defendants were served through Speed Post on 24/12/2022. It is further averred that that the 90 days beyond the statutory period of 30 days expired on 23/04/2023 even if counted from 24/12/2022.
9. It is averred that the defendant nos.1 to 4 have filed the written statement on 20/03/2023 for the first time which was returned under objection on a number of occasions, but the defendant nos. 1 to 3 failed to remove the objections within 30 days. It is further averred that finally all the objections were removed only on 12/09/2023. Thus, there is huge delay in removing the



objections and it could not be condoned without a proper application for condonation of delay in re-filing. In absence of such application, it may be treated as fresh filing on the day when all the objections are removed.

10. It is prayed by the plaintiff that the captioned application is liable to be dismissed with cost. In support of his arguments, learned counsel for the plaintiff has relied upon the following judgments:

- (i) *Ms. Charu Agrawal Vs. Alok Kalia & Ors.*, 300 (2023) DLT 523;
- (ii) *Steel Sripes Wheels Ltd. Vs. Tata AIG General Insurance Co. Ltd.*, 2020 (3) Ar. LR 451 (Delhi);
- (iii) *Government of NCT of Delhi Vs. M/s Y.D. Builders & Hotels Pvt. Ltd.*, 2017 SCC OnLine Del 6812;
- (iv) *H Dohil Construction Company Private Limited Vs. Nahar Exports Limited & Anr.*, (2015) 1 SCC 680;
- (v) *Delhi Development authority Vs. Durga Construction Co.*, 2013 (139) DRJ 133 (DB);
- (vi) *Union of India Vs. M/s Distribution Logistics Infrastructure Pvt. Ltd.*, FAO(OS) (Comm) 28/2024;
- (vii) *Airports Authority of India Vs. M/s TDI International India Private Limited*, OMP (Comm) 70/2021;
- (viii) *Unilin Beheer B.V. vs. Balaji Action Buildwell*, 2019 SCC Online Del 8498 &
- (ix) *Cosco International Pvt. Ltd. Vs. Jagat Singh Dugar*, CS(Comm) 1052/218

11. Arguments were heard in length. Record perused.

12. During the course of arguments, learned counsel for the plaintiff requested for calling a report from the Registry

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regarding the objections raised by the Registry number of times. Registry was directed to file a detailed report with objection raised regarding filing of written statement by the defendant nos.1 to 3.

13. Perusal of record shows that the defendant nos.1 to 3 were served through ordinary mode on 03/01/2023. The defendant nos.1 to 3 have filed written statement for the first time on 20/03/2023 vide diary no.506448/2023 which was returned under the following objections: (i) one time process fee not filed; (ii) affidavit of admission/denial not filed and (iii) application be filed in the category of applications.

14. Thereafter, the defendant nos.1 to 3 have re-filed the written statement on 13/04/2023, which was again returned with the objections as under: (i) electronic details of one time process fee be filed; (ii) affidavit of admission/denial not filed and (iii) I.A for taking written statement on record is under objection. Written statement was re-filed on 26/04/2023 which once again returned under objection for not filing affidavit of admission/denial of documents. Thereafter, Written statement was re-filed on 01/05/2023 but the same was returned under objection.

15. Written statement was thereafter re-filed on 07/05/2023 but was returned under objection for want of affidavit of admission/denial of documents and for not scanning the documents properly. After that, written statement was re-filed on 09/05/2023 but was again returned



under objection for filing it after stipulated period of time. Written statement was once again re-filed on 03/07/2023 but it was returned under the following objections: (i) one time process fee short; (ii) affidavit of admission/denial not filed; (iii) reply be filed in the category of replies; (iv) be filed with Index and proper pagination; (v) proof of service not filed and (vi) filed after stipulated period of time.

16. Thereafter, written statement was re-filed on 11/07/2023 but the same was returned under objection with the following remarks: (i) filed after stipulated period of time, I.A.No.8769/2023 is for condonation of delay in filing reply not for written statement and (ii) Affidavit of admission/denial be filed as per Original Side Rules.

17. On 18/08/2023, written statement was again returned under objection with the remarks (i) one time process fee is deficit and (ii) affidavit of admission/denial not mentioned on Index.

18. On 11/09/2023, written statement was re-filed and the same was returned under objection with the remark (i) Kindly details of all the one time process fee be filed in the requisite columns so that it can be locked.

19. Finally, the objections were removed on 12/09/2023 and the written statement of the defendant nos.1 to 3 came on record subject to court's order.

20. For effective disposal of this application, it would be relevant to refer to Chapter IV Rule 3 of Delhi High



Court (Original Side) Rules, 2018 & Chapter VII Rule 3 of Delhi High Court (Original Side) Rules, 2018 are reproduced hereinbelow:

3. Defective pleading/ document.-(a)
Upon scrutiny, if any pleading(s)/ document(s) are found defective, the Deputy Registrar/ Assistant Registrar, Incharge of the Filing Counter, shall specify the objection(s), a copy of which will be kept for the Court Record, and return for removal of objection(s) and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate. On every refilling caveat clearance shall be taken. In addition, the party must again serve the corrected copy upon the caveator(s) who had a valid caveat at the time of the first filing.

(b) If the pleading(s)/document(s) are not taken back for removal of objection(s) within 30 days time allowed under sub-rule (a), it shall be listed before the Court for appropriate orders.

The 30 days' period for the purpose of (a) and (b) above, shall commence from the date when the Registry raises the objections on the pleading/document filed.

(c) If the pleading(s)/document(s) are filed beyond the time allowed under sub-Rule (a) it shall be accompanied with an application for condonation of delay in re-filing.

21. Chapter VII Rule 3 of Delhi High Court (Original Side) Rules, 2018:

3. Affidavit of admission/ denial of documents alongwith written statement.- Alongwith the written

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statement, defendant shall also file an affidavit of admission/ denial of documents filed by the plaintiff, without which the written statement shall not be taken on record.

22. The defendant nos.1 to 3 have failed to show any cogent reason for non-filing of written statement within statutory period and also for not timely removing the objections raised by the Registry as per the Delhi High Court (Original Side) Rules, 2018.
23. Perusal of record shows that the defendant nos.1 to 3 have filed their affidavit of admission/denial of documents for the first time on 11/07/2023, which was also returned with the objection that same was not as per Delhi High Court (Original Side) Rules.
24. Thus, it clearly shows that there is inordinate delay in filing as well as in re-filing of the written statement by the defendant nos.1 to 3. For the said delay, no explanation has been furnished by the defendant nos.1 to 3 in the captioned IA. They failed to remove the objections in re-filing within 30 days. They have not moved any separate application giving/explaining the reasons for delay in re-filing which is mandatory as per the Rules. Registry has raised objections on multiple occasions but the defendant nos.1 to 3 adopted a casual approach in removing the said objections especially filing of affidavit of admission/denial of documents.
25. The purpose of Delhi High Court (Original Side) Rules, 2018 is to complete the pleadings within the specific



time frame. Allowing the application under Order VIII Rule 1 CPC too liberally would render their purpose otiose.

26. In view of the aforesaid, it is evident that the defendant nos.1 to 3 failed to file written statement within stipulated period and also failed to timely remove/cure the objections raised by the Registry. Defendant nos.1 to 3 have failed to give any cogent explanation for causing delay in filing or re-filing the written statement and they were quite indifferent in removing the objections. Accordingly, the application filed by the defendant nos.1 to 3 is dismissed. No cost.

27. IA stands disposed of.

I.A.No.3605/2023 (under Order VII Rule 11 r/w Section 151 CPC filed on behalf of defendant no.1 to 3) &

I.A.No.3606/2023 (under Section 35A r/w Section 151 CPC filed on behalf of defendant no.1 to 3)

28. As per office note, reply to the captioned IAs have been filed by the plaintiff.

29. Rejoinder, if any, be filed within two weeks with advance copy to the opposite side.

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30. Re-notify the matter for completion of pleadings qua the captioned IAs on **08th July, 2024**.

**MANISH SHARMA, (DHJS)
JOINT REGISTRAR (JUDICIAL)**

MAY 3, 2024/nk

Click here to check corrigendum, if any

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