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

+ CS(OS) 600/2019 and IA No. 16252/2019 (application filed by the plaintiff u/O XXXIX Rules 1 and 2 CPC) and IA No. 16253/2019 (application filed by the plaintiff u/O XXXIX Rule 10 CPC) and IA No. 9594/2020 (application filed by the plaintiff u/O 39 Rule 4 CPC) and IA No. 9610/2020 (application filed by the plaintiff u/O XVA CPC) and IA No. 2018/2021 (application filed by the plaintiffs u/O XXXIX Rule 2A CPC) and IA No. 3194/2020 (application filed by the plaintiff u/O XI Rules 12 and 14 CPC seeking to put on oath discovery of documents of lease deeds produced by defendant nos. 4 and 5 upon the notice, issued by the plaintiffs) and IA No. 3309/2020 (application filed by the plaintiffs u/O I Rule 10 CPC for impleadment of M/s. Mitutotya South Asia Pvt. Ltd. through Managing Director Mr. Narender Bajaj proposed defendant no.8) and IA No. 2765/2021 (application filed by the plaintiffs u/O XXXIX Rule 2A CPC against defendant nos.1 to 3 and 7) and IA No. 14527/2022 (application filed by defendant no.6 u/S 151 CPC for deleting the name of defendant no.6 from the array of parties)

HEM MANOHAR & ANR.

..... Plaintiffs

Through: Counsel (appearance not given)

versus

RACHNA GUPTA & ORS.

..... Defendants

Through: Mr. M.K. Shah, Advocate for Defendant no.6 and proposed defendant no.8 appeared physically

CORAM:

**JOINT REGISTRAR (JUDICIAL) MS. TYAGITA SINGH,
(DHJS)**

ORDER

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12.10.2022

Matter is taken up through physical hearing as well as video conferencing.

CS(OS) 600/2019

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IA No. 2753/2021 (application filed by the applicant/Sh. Rajendra Kumar Gupta u/O I Rule 10 CPC r/w Section 151 CPC)

1. As per file noting, reply has been filed by the petitioner on 06.09.2022.
2. Rejoinder, if any, be filed by the applicant atleast one week before the next date of hearing with advance copy to the opposite parties.

IA No. 11960/2020 (application filed by defendant no.1 u/O VIII Rule 1 CPC r/w Section 151 CPC seeking condonation of delay in filing written statement)

And

IA No. 11961/2020 (application filed by defendant nos. 2 and 3 u/O VIII Rule 1 CPC r/w Section 151 CPC seeking condonation of delay in filing written statement)

1. Vide this order, I shall dispose off both the applications of defendant nos. 1,2 and 3. Similar contents have been mentioned in both the applications by defendant nos. 1,2 and 3. It is stated in the applications that the defendants were served with summons and copy of the plaint on 11.12.2019, but despite their best efforts to engage a counsel, they had to change counsels more than once, due to which delay was caused in filing written statement initially. It has further been stated that defendant no.1 is aged about 83 years and is suffering from various old age ailments and due to COVID-19 Pandemic period, was advised by her doctor to stay at home due to which she could not meet her counsel for giving instructions to file written



statement. It has further been stated that before the expiry of condonable period of 120 days, lockdown had been imposed on 24.03.2020 in the entire country including NCT Delhi, due to spread of COVID-19 Pandemic, and the defendants could not file written statement as the courts were not functioning for many months, and thereafter when courts started functioning, they were functioning in restricted capacity during COVID-19 Pandemic period. Defendant no.1 has sought condonation of delay of 324 days in filing written statement. Defendant nos. 2 and 3 have sought condonation of delay of 330 days in filing written statement.

2. In reply, plaintiff has strongly opposed the applications on the ground that defendants were appearing online during COVID-19 Pandemic, and the Registry of the Court was also working online, and the defendants could have filed written statement online. Plaintiff has further objected that the statutory period of 30 days had already expired before lockdown, though period of 120 days had not expired when lockdown happened in March, 2020, but defendants should not be allowed to take benefit of COVID-19 Pandemic.
3. During the oral arguments, learned counsel for defendants argued that delay was not intentional or deliberate on behalf of defendants and delay was caused due to old age of defendant no.1 and due to spread of COVID-19 Pandemic period. Learned counsel for defendants no. 1, 2 and 3 has relied upon judgment of the Hon'ble Supreme Court in *Suo-Moto Writ Petition (Civil) No. 3/2020* in support of his arguments.



4. On the other hand, learned counsel for the plaintiff argued that defendants have failed to explain delay of each and every day and have also failed to explain sufficient cause for delay.
5. I have perused the applications and reply. Oral arguments addressed by the parties have been considered.
6. Perusal of the applications as well as reply reveals that time period of 30 days from the date of service of summons had expired, but condonable period of 120 days had not expired at the time when the lockdown was imposed upon the entire country due to spread of COVID-19 Pandemic. Therefore, the case of defendants is squarely covered under the purview of the judgement of the Hon'ble Supreme Court in Suo-Moto Writ Petition (Civil) No. 3/2020. Hence, both the applications for condonation of delay in filing written statement are allowed. However, defendants no. 1,2 and 3 are burdened with cost of Rs. 5,000/- each to be paid by defendants no. 1,2 and 3 to plaintiff for delay caused in the case. Written statement of defendant nos. 1,2 and 3 alongwith affidavit of admission/denial are taken on record today. Cost be paid before the next date of hearing.

Both IAs stand disposed off.

CS(OS) 600/2019

1. Written statements alongwith affidavit of admission/denial of defendants no. 1,2 and 3 have been taken on record today.



2. Perusal of the file noting reveals that replication had already been filed alongwith affidavit of admission/denial by the plaintiff to written statement of defendant nos. 1,2 and 3.
3. File noting further reveals that replication alongwith affidavit of admission/denial to written statement of defendant nos. 4,5,6 and 7 is already on record. **Hence, pleadings are complete.**
4. Plaintiff is directed to file Joint Documents Schedule within four weeks. Both the parties are directed to file original signed pleadings and hard copies of the documents on record atleast one week before the next date of hearing. Both the parties are directed to appear alongwith original documents for marking of exhibits on the documents on the next date of hearing. The concerned official is directed to complete the file in all respects before the next date of hearing.
5. Put up for admission/denial and for marking of exhibits and arguments on IA No. 2753/2021 on 23rd January, 2023.

TYAGITA SINGH, (DHJS)
JOINT REGISTRAR (JUDICIAL)

OCTOBER 12, 2022
savita