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

+ **CS(OS) 355/2018**

ANURADHA SEN MOOKERJEE Plaintiff

Through: Ms. Ashu Dutta (in person) proxy for
Mr.Rudra Dutta, Adv. (through VC)

versus

K.S. SAXENA & ANR. Defendants

Through: Mr.Paritosh Dhawan with
Mr.Arindam Deb, Adv. for D2
(through VC)
Mr.Avinash Mohapatra, Adv. for D1
(through VC)

CORAM:

JOINT REGISTRAR (JUDICIAL) MS. SURYA MALIK GROVER (DHJS)

ORDER

% **23.11.2020**

Today is physical hearing of this Court vide office Order No.1056/ORG./DHC/2020 dated 09.10.2020.

IA No.10084/2020 (re-filed by defendant No.2 seeking condonation of delay in filing written statement)

Submissions heard. Record perused.

Learned counsel for plaintiff submits that there is admittedly a delay of 24 days in filing amended written statement. Hence, amended written statement should be taken on record, subject to heavy costs owing to the delay as well as callous conduct of defendant No.2 in causing inordinate delay in re-filing condonation of delay application.

In rebuttal, counsel for the defendant no.2 submits that the amended written statement was filed on 22.02.2020 and the delay was due to time taken in tracing of the old records by the defendant no.2 Department.



Further, condonation application was physically filed well in time on 16.03.2020 vide Diary No. 412635 , however, in view of sudden outbreak of corona virus pandemic, the application was never received back as the lockdown commenced and soon after, as despite repeated attempts, status of the application could not be ascertained, the application was re-filed in compliance of order dated 13.10.2020. As such, there has been no intentional delay in filing amended written statement or moving application seeking condonation of delay.

I have perused the report filed by the Registry as per which, the interim application in question was filed by standing counsel for SDMC, Advocate Dhanesh Relan vide diary No.412635/2020 on 16.03.2020 but returned under objections. Judicial notice can be taken of the fact that thereafter there was a complete lock down and Registry could not function effectively for a substantial period of time. Thereafter, in compliance of order dated 13.10.2020, application seeking condonation was moved within two weeks on 28.10.2020. In view of the record, I am satisfied that there has been no deliberate delay on behalf of defendant No.2 in re-filing the application seeking condonation of delay.

Further, the reasons for delay as assigned in the application appear to be cogent and sufficient. There is a nominal delay of about 24 days over and above directed period of two weeks as granted vide order dated 07.01.2020. Accordingly, application seeking condonation of delay is allowed.

Accordingly, IA stands disposed of.

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Learned counsel for the plaintiff has submitted that order dated 24.02.2019 has been duly complied with by defendant no.1.



It is noteworthy that condonation application of defendant no. 1 is still not on record. Counsel for defendant no.1 has submitted that he has re-filed application vide diary No.E1090816/2020 yesterday only. It appears that the same is under scrutiny.

Registry has filed report that application seeking condonation of delay moved by defendant No.1 vide diary No.231100 dated 14.02.2020 had been returned under objections and was taken by the applicant.

Learned counsel for the plaintiff has vehemently objected that despite repeated directions, defendant No.1 is delaying the proceedings by not filing the application. In rebuttal, learned counsel submits that he was suffering from COVID-19 from 28.10.2020 till 10.11.2020 on account of which, appropriate steps could not be taken for bringing the application on record.

It is a matter of record that application seeking condonation of delay was returned on 14.02.2020 as per the report filed by the Registry. No steps were taken thereafter by the defendant No.1 for bringing the condonation application on record till 16.03.2020, after which lock down was announced. Interestingly, none appeared on behalf of defendant no. 1 on 17.08.2020, 18.09.2020 and 13.10.2020. Finally, on 04.11.2020, Adv.Mr. Parth Tandon appeared on behest of defendant no.1 and sought time to find out status of previous application / re-file condonation application. On perusal of vakalatnama on record, I find that there are three counsels appearing on behest of defendant no.1. Hence, medical difficulty of one of the counsels is not a cogent ground for non-compliance of directions dated 04.11.2020. However, taking a lenient view, as the condonation application has now been filed (though still under scrutiny) and in the larger interest of justice, two weeks' time is granted to defendant No.1 to bring his application on



record. Nominal cost of Rs.1500/- is imposed upon the defendant No.1 for the harassment caused to the plaintiff due to the delay in proceedings on account of conduct of defendant no.1. Cost shall be paid to the plaintiff.

In the meantime, plaintiff is at liberty to file replication to the amended written statement of the defendants without prejudice to her right to contest the condonation application moved by defendant No.1.

List the matter for completion of pleadings on 14.12.2020.

SURYA MALIK GROVER (DHJS)
JOINT REGISTRAR (JUDICIAL)

NOVEMBER 23, 2020
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