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

+ **CS(OS) 1164/2015**

SAAHIL BHATIA

..... Plaintiff

Through Mr. Somesh Arora and Mr. Gulshan
Sharma, Advocates

versus

KASHYAP COMMERCIALS PVT LTD

..... Defendant

Through Mr. P. Nagesh and Mr. Abhinav Lal,
Advocates

CORAM:

**SH. ANIL KUMAR SISODIA (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

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14.01.2016

IA No. 19397/2015

Defendant has filed this application for condonation of delay in filing the written statement.

In the application, it has been stated that defendant received the summons in the third week of May 2015 and before defendant could contact the lawyer, summer vacations commenced in the High Court and lawyers were not available. It was further stated that in July 2015, defendant was pursuing its case with EOW, New Delhi in FIR No. 178/2013 and it took huge time and efforts in arranging the documents for operation of the written statement, as registered office of the company was at Kolkatta and therefore written statement could not be filed within the stipulated period. Written statement was filed on 09.09.2015.

Ld. counsel for plaintiff has not filed any reply to the application, but

has opposed the application vehemently.

Perusal of the record shows that defendant was served with the summons of the suit on 14.05.2015 by Speed Post and on 01.06.2015 by ordinary process. Defendant was required to file written statement within 30 days from the date of service and at the most before 90 days from the date of service of summons.

From the perusal of the Order 8 Rule 1 CPC, three things are clear, firstly that it casts and obligations on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. Secondly, the nature of provision contained in Order 8 Rule 1 CPC is procedural. It is not part of the substantive law. Thirdly, the object behind substituting Order 8 Rule 1 CPC in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of the cases much to the chagrin of the plaintiffs and the petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers of adjournment. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurry but the fairness which is a basic element of justice cannot be permitted to be buried.

In **Zolba Vs. Keshao and Ors. (2008) 11 SCC 769**, it was held that it would be opened to the court to permit the defendant to file his written statement if exceptional circumstances have been made out. It should not be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice of dispensation.

From the perusal of the record, it is apparent that on 28.04.2015 the

summons were issued to defendant returnable for 11.09.2015. No doubt, there is a delay in filing of written statement, but the same has not caused any prejudice to the plaintiff as the next date of hearing fixed by the Hon'ble Court was for 11.09.2015 itself and defendant had filed the written statement on 09.09.2015 and as such there was no adjournment in the matter on account of non-filing of the written statement by the defendant. Further, in view of the reasons given in the application, I am of the considered opinion that the delay in filing written statement can be condoned, subject to terms. Accordingly, the application is allowed and delay in filing of written statement is condoned, subject to cost of Rs. 25,000/-. The defendant shall deposit the cost of Rs. 10,000/- with Delhi High Court Legal Service Committee and remaining cost of Rs. 15,000/- to be paid to plaintiff within three weeks from today.

IA stands disposed off accordingly.

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Plaintiff shall file replication within four weeks from today.

Parties are directed to file their original documents within six weeks from today after exchanging copies.

Affidavit of admission/denial of documents be filed within eight weeks from today after exchanging copies.

Put up for completion of pleadings and admission/denial of documents on 5th April, 2016.

**ANIL KUMAR SISODIA (DHJS)
JOINT REGISTRAR (JUDICIAL)**

JANUARY 14, 2016/savita