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

+ **CS(OS) 3370/2014**

SATBIR SINGH

..... Plaintiff

Through Mr. N. Prabhakar, Advocate

versus

TEJVIR SINGH AND OTHERS

..... Defendants

Through

Mr. Kishore M. Gajaria and Mr.
Piyush Sachdeva, Advocates for
defendant nos. 1

Mr. Sandeep Khurana and Ms.
Seemab Ali Gatima, Advocates for
defendant nos. 2 and 3

Mr. Atul Singh, Advocate for
defendant nos. 4 and 5

Mr. V.K. Singh and Mr. Ajit Kumar
Singh and Ms. Anjali Bhati,
Advocates for defendant no.6

CORAM:

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

ORDER

30.11.2015

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IA No. 15138/2015

1. Defendant no.1 has filed this application for condonation of delay in filing the written statement. In the application, it has been stated that defendant no.1 was served with the summons of the suit sometime in late December 2014. However, before defendant no.1 could file written statement, plaintiff filed application for amendment of his suit

and it was considered appropriate to file the written statement after disposal of the amendment application. It has further been submitted that amendment application was allowed by the Hon'ble Court on 07.04.2015 and defendants were granted time of 30 days for filing the written statement. It has further been stated that defendants were pursuing B.Tech (Final) at the relevant time from DTU, New Delhi and he missed the deadline of 30 days for the reasons that he was busy in preparing for final exams scheduled in May 2015 and ended on 28.05.2015. Immediately thereafter, defendant no.1 started preparing for entrance exam of LLB Course. He appeared for Delhi University LLB Entrance Exam on 07.06.2015 and also applied for admission to Government Law College, Mumbai wherein the last date was 15.07.2015. In the meanwhile, defendant no.1 also received confirmation of his admission to Amity Law School, NOIDA and he was required to complete the formalities by 18.07.2015 including the payment of fees. 20.07.2015 was the birthday of defendant no.1 and thereafter he contacted his counsel for filing the written statement and accordingly written statement was filed on 27.07.2015. It has also been stated that defendant nos. 2 and 3 are younger brother and mother of defendant no.1 who have filed the written statement and written statement of defendant no.1 is also primarily on the same lines.

2. A prayer has been made for condonation of delay in filing of written statement.

3. Ld. counsel for plaintiff has addressed arguments without filing the reply and has vehemently opposed the application on the ground that defendant no.1 has failed to give any exceptionally hard circumstances which prevented him from filing the written statement in time.
4. I have heard ld. counsel for plaintiff and ld. counsel for defendant no.1 and have perused the record carefully.
5. 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 **Complete Dewatering Systems Pvt. Ltd. Vs. DSC Limited**
211(2014) Delhi Law Times 223, it was held that time can be extended in filing written statement even after 90 days of service of summons.

6. Perusal of the record shows that the application of the plaintiff for amendment of the suit was allowed vide order dated 07.04.2015 and defendants were given time to file their written statement within 30 days from the said date. Ld. counsel for defendant no.1 was very much present in the court when the said order was passed and defendant no.1 must be having the knowledge of the order passed by the Hon'ble Court on 07.04.2015. However, in view of the reasons given by defendant no.1 that he was busy in preparation of his final exams of B. Tech and thereafter he was busy in preparation of entrance exams for Law Courses, I am of the considered opinion that the delay cannot be termed as deliberate or contumacious. Hence, the application of defendant no.1 for condonation of delay in filing the written statement is allowed, subject to payment of cost of Rs. 10,000/- to the plaintiff. Cost be paid within three weeks from today.

IA stands disposed off accordingly.

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Subject to payment of cost, written statement of defendant no.1 is taken on record.

Plaintiff shall file replication to the written statement of defendant no.1 within six weeks from today.

Matter be placed before the Hon'ble Court for further directions on **14th January, 2016, the date already fixed.**

ANIL KUMAR SISODIA (DHJS)
JOINT REGISTRAR (JUDICIAL)

NOVEMBER 30, 2015
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