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

\+ CS(OS) 490/2016

DR SANJIV SETHI ..... Plaintiff

Through Ms. Priyanka Ghosh, Adv.

versus

M/S N & N CHOPRA CONSULTANTS PVT LTD ..... Defendant

Through Mr. Upinder Singh, Adv.

CORAM:
SHARAD GUPTA (DHJS), JOINT REGISTRAR (JUDICIAL)

O R D E R

% 17.09.2018

IA No.12224/2018 u/S 5 of Limitation Act moved by defendant for condonation of delay in re-filing of written statement after removal of objections

Learned counsel for plaintiff submits that plaintiff has no objection, in case the present IA is allowed.

Heard. Perused.

In view of aforesaid and submissions made in the captioned IA the delay of 44 days in re-filing of written statement is condoned. IA is accordingly disposed of.

IA No.12223/2018 u/S 5 of Limitation Act moved by defendant for condonation of delay in filing of written statement

Arguments heard.

The present IA has been filed by defendant for condonation of delay of 168 days in filing of written statement on the ground that time was taken in going through the voluminous records for locating the relevant data and for assessing the effect of plaintiff's action on the revenue earning of the defendant company. That defendant company was also required to examine the annual report of the financial year 2014-2015 to determine and form opinion on adverse effect of actions and omissions of the plaintiff. It is prayed that the delay be condoned. Reliance is placed on the following pronouncements:

i) Shreenivas Basudev Vs. Vineet Kumar Kothari (2006) 3 Gauhati Law Reports 230;
ii) Kailash Vs. Nanhku and Others (2005) 4 Supreme Court Cases 480; and
iii) Zolba Vs. Keshao and others (2008) 11 Supreme Court Cases 769.

Plaintiff has filed reply to the present IA asserting that there is a delay of 279 days in filing of written statement from the date of service and a delay of about 202 days from 22.05.2017 when legible copies of documents was served upon the defendants. That plaintiff had filed company petition no.147/2015 against the defendants herein in which the defendants has filed reply on 06.10.2015 alongwith the same documents as are filed alongwith the written statement. That thus there is no merit in assertion of the defendants that time was taken in collecting data, documents and other evidences. That the annual report for the financial year 2014-2015 has not been filed on record and there is no merit assertion of defendants that time was taken in examining the said annual report. It is prayed that the application be dismissed. Reliance is placed on the following pronouncements:

i) Awdesh Chand Jauhari and Ors. Vs. Sarika Jauhari and Ors. MANU/DE/5278/2017;
ii) Mophammed Yusuf Vs. Faij Mohammad and Ors. MANU/SC/8506/2008;

iii) Leena Devi Vs. Sushil Agarwal & Anr. Being CM(M) 813/2017 passed by the Hon'ble Delhi Court dated 02.08.2017; and

iv) Aditya Hotels (P) Limited Vs. Bombay Swadeshi Stores Limited (2007) 14 Supreme Court Cases 431.

Defendants have filed rejoinder asserting that the documents were supplied to defendants on 22.05.2017 and as such defendants had 30 days time to file written statement thereafter and consequently there is delay of about 168 days in filing of written statement. That plaintiff himself took two months to supply documents to the defendants and conduct of the plaintiff demonstrates that there is no urgency in the present matter. That no prejudice has been caused to the plaintiff. That reasons given by the defendants are genuine reasons. It is prayed that the present application be allowed.

It would be fruitful here to advert to the settled proposition of law on the point. The ratio in Kailash Vs. Nanhku AIR 2005 SC 2441 can be adverted to on point of condonation of delay in filing of written statement beyond the stipulated period of 30 days and the extended time of 90 days. In Kailash (supra), it was held that purpose of providing time schedule for filing of written statement under Order VIII R 1 CPC is to expedite and not to scuttle the hearing and the provision being in domain of procedural law is directory and not mandatory and for exceptional circumstances, the delay in filing of written statement even beyond the period stipulated u/O VIII R 1 CPC can be condoned.

In the facts of the case, the defendants have been contesting the present case to the hilt. Thus, at this stage, it cannot be said that the defendants are negligent in contesting the present suit. Defendants were served as per office note on 08.03.2017 through ordinary process and defendant no.1&3 appeared through counsel on 23.03.2017. It was submitted that some of the documents supplied were not legible and some documents were missing from the paper book. It is not disputed that the documents were supplied on 22.05.2017 to the defendants. The period stipulated under Order VIII R 1 CPC would thus commence from date of supply of documents to the defendants. The period of 30 days for filing of written statement would thus elapse on 21.06.2017 when the court was closed for summer vacation. The defendants could have filed written statement till 01.07.2017, which was a Saturday but written statement was filed on 11.12.2017. As per plaintiff, there is delay of about 202 days in filing of written statement. However, in the facts of the case, there is a delay of about 164 days in filing of written statement. The contention of the defendants is that time was taken in analysing the business correspondence of the plaintiff for a period of over 2 years and for assessing the impact of the plaintiff's action on the functioning and revenue of the defendants' company. The assertion of plaintiff per contra is that no additional documents have been filed and the defendants have merely relied upon the same documents as relied upon by them in reply to company petition no.147/2015. However, the defendants have filed documents running into 262 pages alongwith the present written statement and have also referred to the correspondence between the parties including through emails in the written statement. Thus notwithstanding that no document other than those relied on by defendants in Company Petition no.147/2015 has been placed on record, at this stage, it cannot be said that defendants did not take any time in going through the previous correspondence as asserted by them. The defendants have thus given a cogent reason for not filing the written statement within time. In Novartis Ag & Ors. Vs. Cadila Healthcare CS(OS) 1052/2014 dated 29.10.2014 the delay in filing the written statement beyond stipulated period of 120 days on the ground that voluminous records was to be analysed was condoned. Furthermore, no prejudice would be caused to the plaintiff, in case the present IA is allowed and at the most the matter would be decided on merits rather than on technicalities, which is also the mandate of law. The plaintiff can be compensated by way of cost for delay occasion, which are assessed at Rs.10000/-. Accordingly the present IA is allowed and disposed of. Written statement is taken on record subject to payment of cost.

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Plaintiff may file replication, if any, within two weeks with copy to opposite side.

Let partiers of both sides may file their affidavits of admission/denial qua documents of each other within two weeks thereafter, with copies thereof to be exchanged.

Re-notify the matter for completion of pleadings and admission/denial of documents on 22.10.2018.

SHARAD GUPTA (DHJS)
JOINT REGISTRAR (JUDICIAL)

SEPTEMBER 17, 2018/ab