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

+ **CS(COMM) 444/2017**

SHANTA GANGWANI & ORS

..... Plaintiffs

Through: Mr. Harsh Sethi, Mr. Anant
Nigam, Advocates.

versus

JKM BUILDHOME PVT LTD & ORS

..... Defendants

Through: Mr. Anil Mishra, Mr. Ajay Singh,
Mr. Ajay Singh, Mr. Amit Kumar,
Mr. Vivek Kumar Singh, Mr.
Animesh Mishra, Advocates for D-
6 [9911686165].

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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24.02.2023

I.A. 3752/2023 (for exemption)

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

O.A. 17/2023 & I.A. 3753/2023

1. This Chamber Appeal has been filed by defendant No. 6 against an order of the learned Joint Registrar dated 29.05.2019 by which the opportunity to file his written statement was closed. I.A. 3753/2023 seeks condonation of delay of 388 days in filing of the appeal.

2. Mr. Anil Mishra, learned counsel for the defendant No. 6/appellant, submits that summons were issued in the present suit on 11.07.2017. Although defendant No. 6 entered appearance for the first time before the learned Joint Registrar on 05.01.2018, it is stated that a copy of the plaint and suit documents were supplied to learned counsel for the defendant



No. 6 only on 26.04.2018. The parties were thereafter referred to mediation by order dated 27.04.2018, which failed in January, 2019. According to Mr. Mishra, a written statement was filed by defendant No. 6 on 05.03.2019.

3. The orders of the learned Joint Registrar dated 06.03.2019 and 25.04.2019 record that written statement filed by defendant No. 6 was lying under objections. Opportunities were given by both these orders to defendant No. 6 to bring the written statement on record.

4. By the impugned order dated 29.05.2019, it was noted that objections have not been removed. The opportunity to file the written statement was therefore closed.

5. Against the aforesaid order, the appellant has filed the present appeal only on 18.02.2023 with an application for condonation of delay of 388 days. In the application, the appellant has made the following averments:-

“3. That the deceiving erstwhile counsel and his conduct of neither refiling the Written Statement along with the documents nor providing the documents in his possession within the stipulated time period, for the reasons best known to him.

4. That subsequently upon engaging the present counsel, the novel Covid-19 pandemic engulfed the entire country including Delhi and it had a devastating impact on the whole of humanity depriving many of their basic necessity. Due to the enormity, of the Covid-19 Pandemic and consequent lockdown imposed by the concerned authority and subsequently suspended work in the Courts, the Appellant herein was not able to take steps for re-filing the present appeal within the prescribed time period.

5. That upon the return to normalcy, the appellant/ Defendant No. 6 filed a First Appeal against the Order dated 23.12.2019, which was the first hearing against the order passed by the Chamber Judge Hon'ble Justice Ms. Mukta Gupta, wherein under the impression based on the assertion by the erstwhile counsel. The filed first appeal against the Order was under objections and immediate steps were taken by the



present counsel to get the same on record.

6. That meanwhile the objections in the first appeal were being cured the main counsel for the appellant/ Defendant No. 6 suffered a personal loss in a family. Due to the unfortunate demise of the father of the main counsel, the minor delay was caused in curing the defects and getting the FAO listed before the Hon'ble Court.

7. That during the hearing on 18.01.2023, before the Division bench of this High Court, the Hon'ble bench orally guided the counsel for the Appellant/ Defendant No. 6, in the presence of the opposite counsel to file the Chambers Appeal against the Registrar Order.”

6. I am of the view that the reasons stated above are inadequate for condonation of such inordinate delay. The period of limitation for filing a chamber appeal against an order of the learned Joint Registrar is 15 days under Rule 5 of Chapter II of the Delhi High Court (Original Side) Rules, 2018. That period expired on or about 13.06.2019. While responsibility has been placed upon erstwhile counsel for his failure to refile the written statement within time, this does not explain the delay in filing of the present chamber appeal. In any event, the litigant himself, who is party to a commercial suit, must also bear some responsibility to follow up with counsel or to take other appropriate steps if the counsel is found to be unresponsive for such a long period. The reference to the COVID-19 pandemic is also, in the circumstances of this case, misconceived. The appellant had sufficient time between May, 2019 and the pandemic which began in March, 2020 to file the present proceedings. The period of COVID-19 pandemic has also already been excluded by the appellant in computing the delay of 388 days.

7. A reference is made to an appeal filed against an order of the Court dated 23.12.2019. That appeal was apparently withdrawn before the Division Bench on 18.01.2023. In any event, the said appeal was filed in



May, 2022 and objections were cleared only in December, 2022.

8. The objective of expeditious disposal in commercial suits requires parties to be vigilant in agitating their remedies thereunder. The facts of this case demonstrate inordinate and unexplained delay in filing of this appeal.

9. It may be mentioned that according to the plaintiff the delay properly calculated is, in fact, to the tune of 540 days. I do not intend to go into that question as in my view the delay has not been adequately explained even on the showing of the appellant himself.

10. For the aforesaid reasons, I.A. 3753/2023 is dismissed.

11. O.A. 17/2023 is consequently rejected.

I.A. 7926/2019 (under Order V Rule 20(1) read with 151 of CPC)

1. The rights of defendant Nos. 1 to 5 to file their written statements have been closed on 14.03.2018 and 23.12.2019 as recorded in the order of the Court dated 19.02.2020. There is no question of issuing summons to them at this stage.

2. This application is consequently disposed of.

I.A. 7511/2017 (under Order XXXIX Rules 1 and 2 read with Section 151 CPC)

An ad interim order was passed on 11.07.2017.

The application is disposed of making the said order absolute.

C.S.(OS) 444/2017 & I.A. 18270/2019

List on 12.04.2023.

PRATEEK JALAN, J

FEBRUARY 24, 2023/‘Bhupi’/