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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 179/2016
DIMPY JHANJI & ANR

..... Petitioners

Through Mr.Vijay Kasana, Advocate.

versus

THE SOUTH INDIAN BANK LIMITED

..... Respondent

Through Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **22.02.2016**

C.M. No.6461/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

C.M. No.6462/2016 (for condonation of delay in refilling this petition)

In view of the averments made in the application the delay of 25 days in re-filing this petition is condoned. Application disposed of.

CM(M) 179/2016 & C.M. No.6460/2016 (stay)

Petitioner is aggrieved by the order dated 12.10.2015 vide which the application filed by him under Section 114 of the CPC read with Order XLVII of the CPC seeking review of an earlier order dated 14.01.2015 had been dismissed. Vide order dated 14.01.2015 right of

the petitioner (defendant in the Trial Court) to file his written statement had been declined. On the passing of this order, on 04.02.2015 a review petition had been filed seeking recall 14.01.2015 wherein the delay was sought to be explained. In this application, it has been averred that due to the demise of the relative of the counsel for the defendant the written statement could not be filed as the counsel was travelling out of station and because of the last rites and rituals neither the written statement was prepared nor the counsel could appear. This was the bonafide reason for not filing the written statement on 14.01.2015. On 04.02.2015 along with the application seeking recall of the order dated 14.01.2015 the written statement had been filed.

Record shows that the present suit is a suit for recovery of Rs.9,79,448/-. Plaintiff before the Trial Court is the South Indian Bank Ltd. Record further discloses that there is a delay of 133 days in filing the written statement i.e. if the written statement was taken on record on 04.02.2015. Learned counsel for the petitioner submits that if the extended time of 90 days is counted, the delay would be of 43 days. This factual submission is correct.

The right of the petitioner would undoubtedly be jeopardised in case he is not allowed to plead his defence. There is no doubt that there has been an inordinate delay in filing the written statement but the explanation tendered by the learned counsel for the petitioner does appear to be justifiable.

Accordingly, while setting aside the impugned order dated 12.10.2015 the written statement already filed by the petitioner on

04.02.2015 is taken on record. This order is passed subject to payment of Rs.15,000/- as cost which is in addition to the costs already payable by the petitioner before the Trial Court.

Petition disposed of.

INDERMEET KAUR, J

FEBRUARY 22, 2016

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